

Elizabeth Hardwick on Chekhov's Delicacy

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The Courts Can't Save Us

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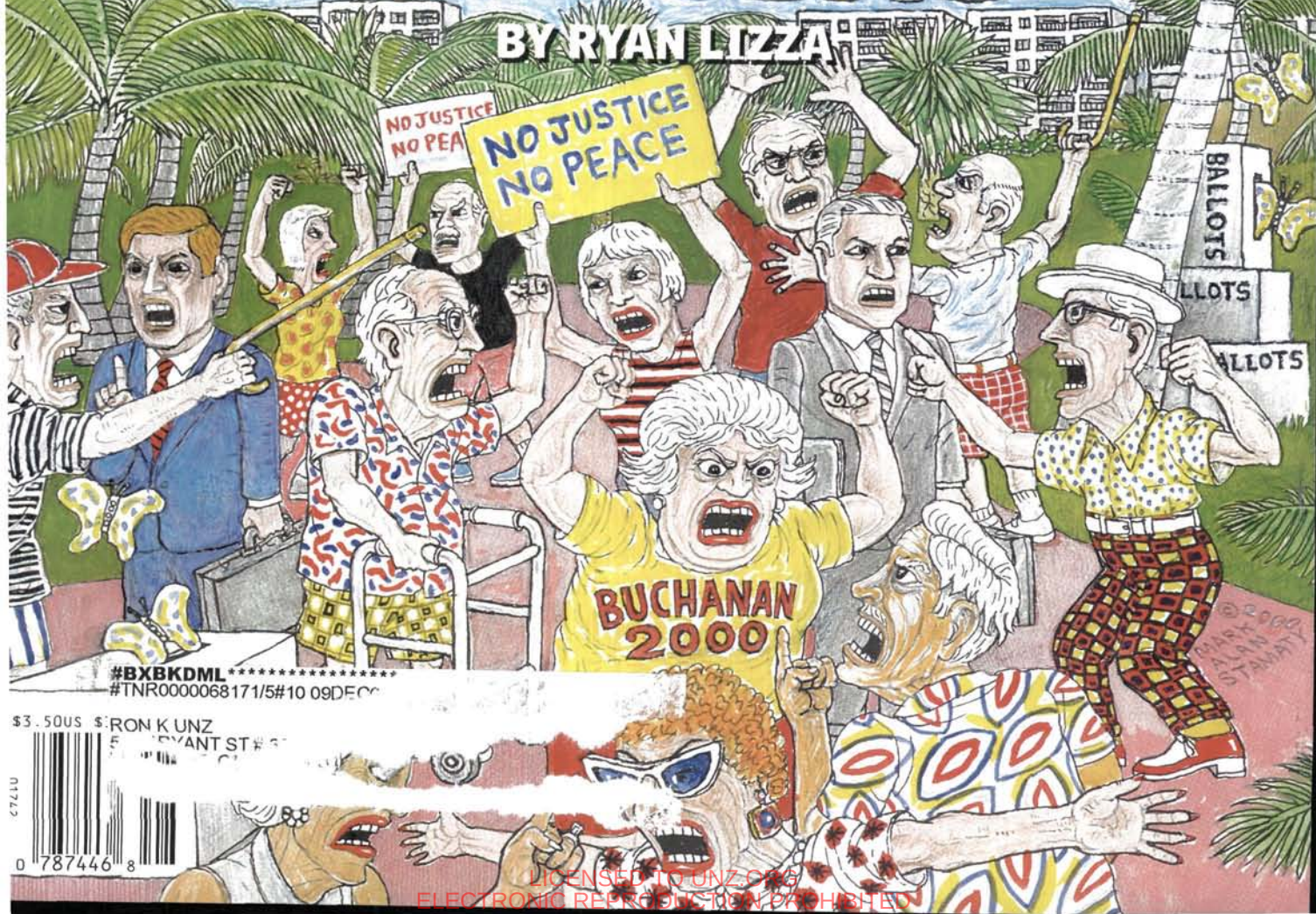
Yes, They Can

JONATHAN CHAIT

NOVEMBER 27, 2000

APOCALYPSE PALM BEACH

BY RYAN LIZZA



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NOVEMBER 27, 2000

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THE NEW REPUBLIC, Vol. 223, Number 22, Issue 4,480, November 27, 2000. (Printed in the United States on November 15, 2000.) Published weekly (except for combined issues dated January 3, April 17 & 24, July 10 & 17, and August 28 & September 4, 2000) at 1220 19th Street, NW, Washington, D.C. 20036. Telephone (202) 331-7494. For advertising inquiries, please contact Ann Rossaki at (202) 331-7494 or Ellen Jarvis in our NY sales office at (212) 924-8700. Yearly subscriptions, \$59.94; foreign, \$99.94 (U.S. funds); Canada, \$79.94 (U.S. funds). Back issues, \$4.00 (includes postage & handling). © 2000 by The New Republic, Inc. (ISSN 0028-6583). Periodicals postage paid at Washington, D.C., and additional mailing offices. Rights and permissions: fax (202) 331-0275. Indexed in Readers' Guide, Media Review Digest. Microform, Canadian Periodical Index, CD-ROM, issue, and article copies are available through University Microfilms Intl., 300 N. Zeeb Road, Ann Arbor, MI 48106. Telephone 1-800-521-0600. Postmaster: Send changes of address to The New Republic, P.O. Box 37298, Boone, IA 50037-0298. Member, Audit Bureau of Circulations. Unsolicited manuscripts can be returned only if accompanied by a self-addressed, stamped envelope (e-mail address: tnr@aol.com). For subscription inquiries or problems call 1-800-827-1289 or visit our website at www.tnr.com.

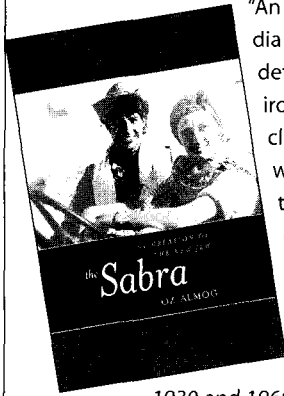
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Money talks

TO THE EDITORS:

Bryan Curtis's article on DNC Chairman Ed Rendell was wildly off-base ("Local Hero," October 23). Out here in America, Rendell is a hero to Democrats. The reason, buried deep in *THE NEW REPUBLIC*'s screed, is simple: "Rendell has kept his party awash in funds."

Hello! Do you realize what an achievement that is when the Republicans are offering everything in sight to corporations and the wealthy? Rendell's office is first and foremost a fund-raising post. He has excelled through hard work and through his reputation for candor and humor, which seems to be the cause of concern to TNR and the 27-year-old Beltway bureaucrats quoted in your article.

When the Democrats pick up seats in the House and Senate and retain the White House in November, I hope Curtis will make a nice meal of your October 23 issue.

ERIC T. SCHNEIDERMAN
New York State Senator
Thirtieth District
New York, New York

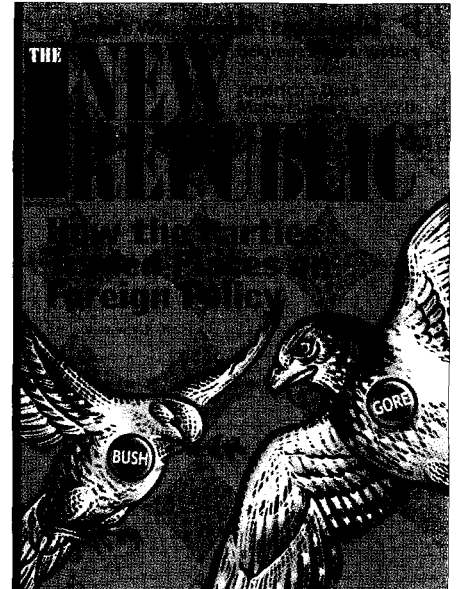
Due process

TO THE EDITORS:

Cass R. Sunstein's "Is Nature Good?" (October 23) is a valuable review of *Pandora's Picnic Basket*, by Alan McHughen, and a first-rate treatment of a highly polarized complex of issues surrounding genetically engineered crop plants and foods.

Unfortunately, Sunstein seems to suggest that McHughen is unique in arguing that "we should not be concerned with genetic engineering as a process" and that "[w]e should concern ourselves, instead, with particular products of the process." While these points are certainly valid, they've been part and parcel of the scientific consensus on genetic engineering for at least two decades, and they have been conspicuously incorporated into recommendations from the U.S. National Academy of Sciences, the Royal Society of London, the U.N. Food and Agriculture Organization, and more than a dozen other scientific societies.

Those views are also reflected in U.S. public policy. Although the Department of Agriculture and the Environmental Protection Agency do hold genetically engineered plants to considerably higher regulatory standards than plants modified by other methods, the Food and Drug Administration generally does not, limiting its evaluations to the specific risks raised by individual products. Yet despite the scientific consensus that it's the prod-



uct, not the process, that matters, critics of genetic engineering become apoplectic at the very thought that the FDA does not treat genetic engineering as *prima facie* evidence of a safety risk.

GREGORY CONKO
Director of Food Safety Policy
Competitive Enterprise Institute
Washington, D.C.

Retire the debt

TO THE EDITORS:

In "Generation X" (October 23), John Geanakoplos implies that the payroll-funded Social Security program was created in 1935 primarily to relieve the suffering of indigent elderly during the Depression, that the "pay as you go" promise to workers was the means chosen to deliver those benefits right away, and that workers and voters at the time understood as much. He then argues that any effort to move away from "pay as you go"—for instance, offering higher returns to today's workers by letting them "own" some of their contributions—represents a repudiation or at least a misunderstanding of this original and sacred covenant. Unfortunately, the facts don't support this interpretation.

Yes, Congress urgently desired to assist needy elderly during the Depression. It acted by passing the highly popular Title I of the 1935 Social Security Act, establishing "Old Age Assistance" (OAA), a means-tested welfare program for the elderly, financed out of general revenues. Also contained in the act, of course, was Title II, establishing Old Age Insurance (OAI), the payroll-funded program we know today simply as "Social Security." But this program was much criticized at the time—in part because it was not designed as a "pay

as you go" system and did not schedule sizable benefit payments until the distant future. It didn't issue its first monthly benefits until 1940, and even by 1950 it paid nowhere near as much in total benefits (\$651 million) as the poverty-tested OAA "welfare" program (\$1.5 billion).

Almost none of today's \$10 trillion unfunded Social Security benefit liabilities can be attributed to the meager OAI benefits handed out to a relatively small number of retirees before 1950. Those massive liabilities came later—during the 1950s, when Congress delayed payroll tax hikes and accelerated benefit eligibility, and especially during the late '60s and the 1970s, when Congress combined huge benefit increases and COLA-indexing with an explicit embrace of the "pay as you go" financing principle. The latter era was not famous for elderly destitution—certainly not after 1974, when the senior poverty rate fell beneath the child poverty rate for the first time in American history. Nor were these new liabilities targeted to the needy elderly. According to Eugene Steuerle of the Urban Institute, a low-earning one-worker couple retiring in 1980 received a lifetime net subsidy of \$123,000 from younger workers, while a

high-earning couple retiring in 1975 received a net subsidy of \$233,000.

So, when we confront Social Security's unfunded \$10 trillion, let's not talk about helping Ma and Pa Joad buy food during the Dust Bowl years. It would be more accurate to talk about helping middle-class seniors build Sun City. Nor did most American voters constitute, at any time, a knowing party to this gradual switch to a "pay as you go" contract. Even today, surveys show that few voters understand how today's workers support today's retirees. And those who understand it best—the young and the educated—are most likely to advocate reforming the system.

NEIL HOWE
Senior Advisor
Concord Coalition
Washington, D.C.

JOHN GEANAKOPLOS REPLIES:

The point of my article was to explain that the Social Security system is projected to yield a low return on contributions not because the money is being mismanaged but because the system has already distributed \$10 trillion to past retirees in excess of their contributions. Many people misunderstand this, not appreciating the

magnitude of the transfers or thinking that if the "gifts" have already been made, they must have already been paid for. But that is wrong. In our "pay as you go" system, each succeeding generation will pay a little of the \$10 trillion (by getting a low return on its contributions) until it is all paid off. Any reform of the system must also deal with this \$10 trillion and so cannot possibly guarantee market returns to everybody. Neil Howe argues energetically that it was the retirees of the 1970s, not those of the 1940s, who got the bulk of the transfers; actually, it was the generation that fought World War II, those born between 1905 and 1915. But all that is irrelevant to my point. Whoever got the money, it is gone. Arguing that those who got it were somehow unworthy or that the American people didn't "agree" to the system set up by Congress adds nothing to the case for reform. The system is in need of reform because without reform it will go broke. The hard question is how to reform it. Private accounts cannot pay off the system's debts, but there is another reason to include some limited form of private accounts in a comprehensive reform of the system: diversification for the poor. I leave that argument for another day. ■

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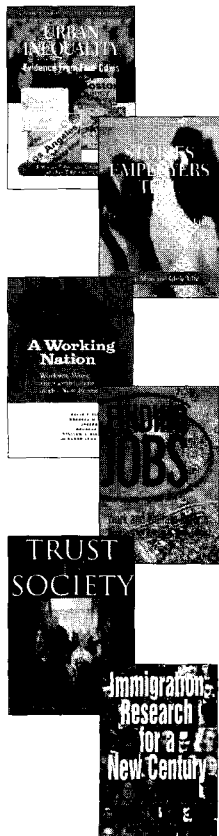
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TRB

FROM WASHINGTON

Chill

CHEER UP.

Yes, I know it's only a matter of time before Al Sharpton pops up in Tallahassee: "No chads, no peace!" Yes, I'm aware that Al Gore's lawyers could end up making him the O.J. Simpson of the political world—victorious but widely loathed. And, yes, I know that Katherine Harris is fast giving Linda Tripp a run for her money. (And who does her makeup? The same people who microwaved Gore for the first presidential debate?)

But still . . . it could be a lot worse. In some ways this election result is the perfect expression of the country's mood. You could sum up that majestic national sentiment in two words: neither, thanks. We have been granted a week's blissful vacation from the reality that either the insufferable Gore or the imperturbable George W. Bush has won the highest office in the land. This grace period, I am sorry to inform you, will shortly end. Enjoy it while you can.

The good news is that, although the next four years will surely be worse than this week, they'll be much better than seemed possible just a short while ago. The upshot of this excruciating cliffhanger is that both candidates will be severely constrained in the damage they could do as president. Did you, like many other Americans, back your candidate with severe reluctance? Then this is your lucky day!

Start with W. In the end, I supported him, with reservations. What were my reservations? The cocky, lazy hubris of the end of his campaign, the callowness of his resumé, his tendency to pander to the hard right when in trouble (remember South Carolina?). With this hanging-chad election, things are looking up on every front. Somehow I think W.'s penchant for hubris may be kept in check a little better from now on. And I doubt he'll ever again take Sunday off at the height of a campaign. Even better, this result is terrible for the religious right. Bush swept the fundamentalist vote but won moderates by tempering the puritanism of the last few Congresses. What-

ever else Bush is, he is not a scold. He's a recovering drunk with an ability to laugh at himself. I consider both to be character pluses. But if he was ever tempted to throw a few amendments to Jerry Falwell, this razor-close vote will surely restrain him. I never believed he would appoint fire breathers to the Supreme Court, anyway, but now there's no chance whatsoever. With a deficit in the popular vote and a squeaker in the electoral college, W. wouldn't exactly have a mandate for revolution. If he wins, the country will be run by the likes of John Breaux and Colin Powell. There will be a far smaller tax cut and possibly no change in the estate tax. Most of the surplus will probably be used to pay down the debt, which is perfectly fine by me—in fact, far better. As for Social Security? I feel another bipartisan commission coming on.

But the cost-benefit analysis is even more striking if Gore litigates his way into the White House. If Gore had won Florida easily—and done as well if not better elsewhere—we'd be in real trouble right now. In this election, Gore all but abandoned the Democratic Party's slow, difficult path back to the center. You can see the results in the exit polls. Independent, middle-class, and Catholic voters—key Clinton converts—have moved closer to the Republicans. Perot voters went overwhelmingly for Bush. So did McCainiacs. Gore won almost entirely because of his party base. The end game in Florida is just a replay of the campaign at large: a frenetic attempt to find more black, Jewish, and elderly votes, with the help of an army of trial lawyers. Gore—the New Democrat with a history of principled truth-telling on race—got an even higher proportion of black votes than Bill Clinton did in 1996. Those NAACP ads all but accusing Bush of being in the Klan must have worked! The unions were just as important, securing Michigan and Pennsylvania with a truly impressive get-out-the-vote effort. Put that together with the unseemly attempt to give anyone over the age of 65 a juicy new federal entitlement, and Gore's victory suggests government of, by, and for the old left. Angela Davis would have been angling for an office in the West Wing.

But now there's hope. If Gore wins this election by selective hand-counting in three Democratic counties in Florida and a large, undated mailbag from Israel, he won't have much legitimacy outside his own party. He'll get extremely little through Congress; and by 2002, the odds are that the Republicans will win big. Given that, Gore will have to tread very, very carefully in the Oval Office. He won't get his beloved Medicare benefit; he won't get his blizzard of new tax shelters; he'll

be lucky if even extreme moderates get through the Senate Judiciary Committee on the way to the Supreme Court. Instead of paying back his base, he'll have a big excuse to sell it out. After a campaign in which he flipped hard to the left, his contested victory could produce a flip back to the center: more debt reduction, modest new tax shelters, minor Medicare reform. We might even see a collapse in the influence of Bob Shrum and Stanley Greenberg. To which one can only respond: Hallelujah.

Either result is far closer to what the voters want than a definitive Bush or Gore victory would have been. I'd bet a modest plurality of Bush voters would tolerate Gore if he hadn't become such a born-again populist. And vice versa—if Bush didn't have such close ties to the religious right. In a way, then, this deadlock is a backhanded tribute to the professionalization of modern politics. Both candidates essentially said throughout the campaign what the focus groups told them we wanted to hear, with a few sops to their bases. Those focus groups, as Clinton might say, are goo-ood. And what happens when both candidates try out equally poll-tested messages with equally good research and polling teams? Other things being equal, in a time of peace and prosperity, they cancel each other out. The result is what we're now contemplating: a dead heat.

So let's hear it for the joys of modern technology. Our high-tech campaigns avoid the troublesome process of candidates' saying what they think and letting the electoral chips fall where they may. Today's campaigns, to a great extent, are failure-proof, even with candidates of the caliber of Bush and Gore. So one failure-proof campaign meets another failure-proof campaign—and both win! And, since the person who eventually occupies the White House will govern using the same focus groups and polling numbers that got him there, there's no need to worry. No one will go and do anything stupid, like act on principle or something.

So relax and enjoy. As I write, I still don't know who will be president-elect. But you know what? It doesn't matter that much. The differences are now so small that it will matter little who walks away with the Oval Office—which is one reason, of course, for the sanguine way in which most Americans have greeted this past, surreal week. It's also one reason for the partisan bitterness in both camps. Only nations with so little at stake can engage in these kinds of shenanigans. And "little" describes both men at this point very well indeed.

ANDREW SULLIVAN



Hand Over Fist

FOR MORE THAN a week after election night, there existed a rough moral symmetry between the Gore and Bush positions on how the deadlock should be resolved. The Bush team insisted there should be no hand recounts—which was wrong, since hand recounts are a more accurate, if more laborious, way to count votes. The Gore

team insisted there should be hand recounts in only overwhelmingly Democratic counties—which was also wrong, since it meant ballots would receive closer inspection in Democratic areas than in Republican ones.

But, as *THE NEW REPUBLIC* went to press, events drastically altered that equation. And whatever the state of play legally and politically, Al Gore's position is now clearly more generous, less arbitrary, and more fair than the one espoused by George W. Bush.

At 6:30 Wednesday evening, Gore took the podium at his Washington, D.C., residence and offered the best proposal yet for settling the dispute over Election 2000. Now that the Florida Supreme Court has blessed a hand count of ballots in three Florida counties, Gore said, he would drop any future litigation and—if the Bush campaign so wished—accede to a statewide hand count of the ballots. What's more, he vowed to "improve the tone of our dialogue in America" by holding two one-on-one meetings with the Texas governor, one before the recount was finished and one after.

It was a crafty public relations offensive. After all, it's no secret that, because most of the voting miscounts probably occurred in such heavily Democratic counties as Broward, Miami-Dade, and Palm Beach, the recount would likely give Gore Florida's 25 electoral votes. But sometimes the politically expedient thing is also the right thing. A hand count of every county in the state would offer the most accurate record possible of how the people of Florida voted on November 7. And although Gore is justifiably confident he would win such a recount, it would still have been safer for him to stick to his demand for a recount only in overwhelmingly Democratic Broward, Miami-Dade, and Palm Beach Counties.

And then, just after 9 p.m. that same night, Florida's Republican secretary of state, Katherine Harris, took the podium in Tallahassee to announce she was rejecting Broward, Miami-Dade, and Palm Beach's hand-count petitions once and for all. Harris was not simply following Florida law, as she claimed. After all, two Florida courts had clearly said she had the right to certify the hand counts. Indeed, Circuit Court Judge Terry Lewis warned that she needed good reason not to. Harris rejected hand counts in the three counties for the same reason the Bush campaign rejected Gore's offer of hand counts statewide: politics.

In a subsequent speech formally rebuffing Gore's offer, George W. Bush claimed hand counts are inherently less reliable than machine counts. But this is nonsense. Bush himself signed a law in Texas preferring hand counts. Of course, a hand count without clear rules for what constitutes a valid ballot would degenerate into a partisan food fight. But, contrary to Bush spin, Palm Beach has drawn up clear and fair standards for its count—counting dangling chads but not chads that are merely "dimpled" or "pregnant," for instance—and there's no reason the state couldn't do so as well.

Granted, a statewide hand count might take time. The Bush campaign, with the commentariat cheering it on, implies that we must declare a president by this weekend or our democracy will crumble. But there are worse things than waiting. It was the manic need to know the election's outcome before we rightfully could that led the media to disgrace itself on election night. And ordinary Americans seem to understand this. A *Wall Street Journal*/NBC poll released Tuesday shows that 55 percent of Americans are willing to wait for a more accurate result, even if it takes weeks.

The harsh reality of this post-election fight, at least as of Wednesday night, is that the odds are against the Bush campaign either way. If W. continues on his current course, a Florida court will likely order Harris to certify the hand counts in Broward, Miami-Dade, and Palm Beach. Those hand counts will probably put Gore over the top. And George W. will not only have lost the presidency, he will have looked petty and self-interested in doing so. Even in the unlikely event that the courts do not intervene and Bush wins, his presidency will have been disgraced before it began. If, on the other hand, he takes Gore's offer of a statewide hand count, he will have given this country the gift of a legitimate president. Who knows—it might even be him. ■

OLD FAMILIAR WAYS: The years following Bob Dole's 1996 presidential defeat have afforded him numerous chances to lose his image, earned over the course of years in the Senate, as a Republican hatchet man. Trouble is, just when it looks as if he's made the transition to elder statesman, the nasty partisan keeps coming back out. Consider his performance on ABC's "This Week" last Sunday. Asked about a hand count in Florida, the former majority leader snapped, "Why don't they do all 50 states, then?... Why don't they go to Chicago, where they invented irregularities? You know, Bill Daley's an expert on irregularities. Even the dead vote in Chicago." Dole then threw more fuel on the fire, suggesting something no credible Republican had even contemplated yet: boycotting the inaugural if Gore should ultimately win. What do they put in that Viagra stuff, anyway?

LOYAL TO THE CAUSE: It turns out that Florida Secretary of State Katherine Harris was pretty busy working on the Texas governor's behalf *before* the election. Earlier this fall, it was Harris's office that initially denied Pat Buchanan a place on the Florida ballot. Harris maintained that it was unclear who the true Reform nominee was, even after a slew of other states had given spots to Buchanan and after the Federal Election Commission awarded him the Reform Party's \$12.6 million in matching funds. Buchanan prevailed after his opponents in the Reform Party dropped their challenge to his nomination. At the time, Buchanan supporters insisted that Harris was trying to help Bush by keeping Buchanan off the ballot. Little did they know that a few months later she would try to make sure Buchanan got every vote he possibly could in Florida—particularly in Palm Beach.

OH, NEVER MIND: "The Democrats are trying to take the election of the president out of the election process, which is controlled by voters, and put it in the court process, which is controlled by lawyers."—Former GOP Chairman Haley Barbour, November 9

"I don't think anyone thinks that a lengthy and protracted [*sic*], scores of lawyers, endless legal battles, with no reasonable or foreseeable conclusion, would be healthy for the country."—Bush spokeswoman Karen Hughes, November 10

"BUSH SUES TO HALT HAND RECOUNT IN FLORIDA"—*The New York Times*, November 12

MURPHY'S FLAW: Poor Mike Murphy. By any measure, he has had a lousy time lately. He began 2000 as the GOP's most celebrated media guru, having engineered John McCain's remarkable New Hampshire insurgency. Then, on election night, Murphy's two blockbuster clients—Michigan Senator Spencer Abraham and New York Senate candidate Rick Lazio—lost. But that was only the beginning. According to an *NYPPost.com* report, Lazio had stopped talking with his guru in the final weeks of the campaign. Why the silent treatment? Apparently Murphy, over Lazio's objections, had broadcast radio ads attacking opponent Hillary Clinton for supporting a global warming treaty. (Lazio feared the ads would make him look hypocritical, since he himself is a staunch environmentalist.) One source told the tabloid that Murphy "thought he could

do whatever he wanted. Murphy thought he was the expert, not Lazio." Ah, well. Murphy can still refurbish his image with his next client. If he finds one, that is.

SEPARATED AT BIRTH?



From top to bottom: Florida Secretary of State Katherine Harris and rock star Ozzy Osborne

HOW ABOUT LAST AND WRONG?: "Let's get one thing straight right from the get-go: We would rather be last in reporting returns than wrong.... [I]f we say somebody's carried the state, you can take that to the bank."—Dan Rather, early in CBS's election-night broadcast, November 7

COOLER HEADS PREVAIL: Who says there are no Washington wise men willing to stand up for what's right rather than what's politically expedient during the election controversy? Last Friday, Judicial Watch—the right-wing nonprofit group that has spent the last six years suing anything in Washington that moves and ginning up the wildest Clinton conspiracies imaginable—announced it was stepping up to the plate. Larry Klayman, the group's chairman and general counsel, revealed that his organization had petitioned various Florida counties for permission to inspect the ballots. "[T]here are few government officials in this country willing to make decisions on the merits in political cases," said Klayman, whose group famously suggested that Ron Brown was murdered. "That is why Judicial Watch is so important: to protect the rights of the citizens against the manipulations and lawlessness of the politicians." According to Klayman, Miami-Dade County has already agreed to the group's request. Klayman added that he was prepared to sue any counties that do not. We don't doubt it.

GREAT MOMENTS IN INDEPENDENT THOUGHT: "How are we supposed to do the spin when we don't know their next step?"—Indiana Representative Mark Souder, complaining about the Bush campaign to *The New York Times*, November 15

IN TEXAS, ON THE OTHER HAND...: "In a state like Florida, I'm going to wait until every vote is counted."—George W. Bush, *The Orlando Sentinel*, November 8

DEPARTMENT OF IRRESPONSIBLE RHETORIC: "I marched 35 years ago in Selma, Alabama, for the vote to count. We marched too much, bled too profusely, and died too young. We must not surrender."—Jesse Jackson, November 13, commenting on alleged discrimination against minorities in the Florida balloting

DEPARTMENT OF IRRESPONSIBLE RHETORIC, II: "[The election delay] might lead someone who wants to strike at the United States to do so ... [and] could be the cause of undermining the economy and loss of confidence."—Virginia Senator John Warner, November 13

DEPARTMENT OF IRRESPONSIBLE RHETORIC, III: "A great many people are underestimating the threat to our system of government the longer this goes on. The people of Rome never thought their government would ever collapse. The Greeks never thought they'd lose it. Americans, being the great Pollyannas of the world, I don't think realize the great threat."—Ohio Representative John Boehner, *The New York Times*, November 14

URBAN PRIDE: "In big cities, we would make a state like Florida look like the cleanest place in the whole world, given what goes on in America's big cities in terms of voter fraud."—New York City Mayor Rudy Giuliani, "Hardball," November 8

URBAN PRIDE, II: "At the 15th Avenue School in Newark, even the poll workers appeared to be campaigning for [New Jersey Senate candidate Jon] Corzine. An official

signing in voters there said she was within her rights by 'telling people to vote for him right before they vote.' 'I can work both,' she said, as other election officials suddenly removed their Corzine stickers. 'Nothing says I can't.' A moment later, two men ejected the reporter, threatening to assault him if he did not leave."—*The New York Times*, November 8

HOW PAT BUCHANAN REALLY WON 3,000 VOTES IN PALM BEACH:

BUCHANAN:
He hasn't forgotten about the Holocaust!

Are you an elder? Are you of Zion?
PAT CARES ABOUT YOU!

A REFORM party leader, a staunch CONSERVATIVE,
willing to stand up for ORTHODOX values.

Buchanan: He'll bring our boychiks
home from Bosnia!

Tired of Sephardim stealing your seats in shul?
A vote for Pat is a vote for immigration control!

ARE YOUR OMELETTES ALL-WHITE?
Then Pat's your man!

Had enough of the U.N. aggravating Israel?
Hello Buchanan, bye-bye U.N.!

BUCHANAN:
1942 Swampoodle High Shuffleboard Champ

Buchanan: HE'LL MAKE THE
BINGO GAMES
START ON TIME!

DEPARTMENT OF CORRECTIONS: A recent article ("Confidence Game," by Jonathan Chait, November 13) quoted *Washington Post* columnist E. J. Dionne as arguing that George W. Bush's choice of Dick Cheney as his running mate was a sign of Bush's confidence he would win the presidency. While the quote, on its own, may have suggested that, the column from which it was drawn actually concluded that Bush might be dangerously overconfident.

DEPARTMENT OF CORRECTIONS, II: An item in the November 13 Notebook incorrectly claimed that an article by Tunku Varadarajan had appeared on *WallStreet-Journal.com*. The article actually appeared on *OpinionJournal.com*, which is affiliated with the same company but is a separate website. ■

Why Election 2000 is the opposite of 1876.

Making Hayes

By JOHN B. JUDIS

IT MAY BE weeks until we know who our next president will be, but this year's election has already produced one clear winner: Rutherford B. Hayes. Even when Hayes was president, it's doubtful he got as much ink as he has this past week, as historians and pundits have drawn countless comparisons between this year's presidential contest and the one in 1876. It's not hard to see why. Like today, the 1876 presidential election—between the Republican Hayes and the Democrat Samuel J. Tilden—was remarkably close. And, like today, it hinged on disputed results in four states—including Florida and Oregon—that prevented either candidate from securing a majority of electoral votes.

But that's where the similarities end. In 1876, the country couldn't decide on a president because the divisions between the parties were so great. This year, the country can't decide on a president because the divisions are so small. This isn't a constitutional crisis; it's a struggle whose tone is so bitter because the stakes are so low. But, ironically, that may make it harder to solve. The parties ended the crisis of 1876 with a deal—trading the presidency for the end of Reconstruction. Because the divisions between today's Democrats and Republicans are nowhere near as profound, it's hard to imagine any issue that either side cares about enough to sacrifice the presidency for.

In 1876, the disagreement centered on the electoral vote in three Southern states in which federal troops, acting on the newly adopted Fifteenth Amendment, were enforcing voting rights for blacks. (The dispute in Oregon was a partisan squabble over the loyalty of a single elector.) Republicans and Democrats in those Southern states submitted rival tallies showing that their candidate had won. Republicans accused Democrats of failing to count black voters, while Democrats accused Republicans of ignoring white voters. A 15-man electoral commission, appointed in January 1877 by President Ulysses S. Grant, a Republican, ruled along party lines for Hayes, but Southern Democrats threatened to block acceptance of the electoral college results. At a private meeting of party leaders in February at the Wormley Hotel in Washington, Democrats acquiesced to Hayes's election in exchange for Republican promises to withdraw federal troops from the South. In effect, Republicans traded the presidency for the disenfranchisement of Southern blacks.

In this year's election, by contrast, no such fault line divided the parties. Yes, many Democrats and Republicans disagree about abortion, gun control, vouchers, and tax cuts, but these are not disagreements that could trigger a potential breakdown of the political system. Can you imagine any contemporary issue for which Democratic or Republican leaders

would trade the presidency? Tort reform? RU-486? Background checks at gun shows? A patients' bill of rights? This election has not been a particularly important referendum on the future of the country; it's just incredibly close.

Indeed, the 2000 election represents the continuation of a narrowing of the differences between the two parties that began in 1992, when Bill Clinton moved his party to the center and won the presidency. This year, the Republicans, after losing the White House twice and House seats in the 1998 midterm elections, adopted a more centrist posture as well. Bush and many Republican congressional candidates mimicked Democratic positions on HMO regulation and prescription drugs, while striking a moderate pose on hot-button issues like affirmative action and abortion (see "The Spirit of '76," by John B. Judis, November 6).

The parties have moved to the center for good reason: It's where the voters are. In this year's election, the majority of voters identified themselves as "moderate," and in battleground states like Florida, New Mexico, and Wisconsin, they split their vote almost exactly between Gore and Bush. Ralph Nader, the candidate of the left, and Pat Buchanan, the candidate of the right, didn't garner 5 percent of the vote between them. And the voters were not only moderate on policy, they were moderate in tone—for most Americans, this election utterly lacked urgency. At 50.7 percent, turnout was the third-lowest this century. In 1876, by contrast, it was around 82 percent.

AND IF IMPEACHMENT proved anything, it is that politicians can't tear the country apart unless the people want them to. The party professionals and interest groups around the two campaigns have convinced themselves that the country's fate rests on who wins the maneuvering in Florida. Top Bush strategist Karl Rove has compared this election to the election of 1896, which ushered in 16 years of Republican rule. Leaders of the AFL-CIO, NARAL, the NAACP, and the Sierra Club have clearly internalized their campaign slogans—insisting that if Bush wins, the sky will fall.

But the evidence suggests the opposite. Whoever is president will face a divided Congress capable of blocking any legislation or appointment that looks at all extreme or partisan. The next president will hew strictly to the center, and it will be future elections, not this one, that turn the country in one ideological direction. My guess is that, in the next couple of elections, the country will swing further left. But that swing may actually happen faster if Bush wins—since the Democrats would likely use his enfeebled presidency to retake Congress in 2002.

The danger today is not an immediate ideological shift or a constitutional crisis but the kind of political sclerosis that the country suffered during impeachment. Two years ago, the Republicans were driven to impeach Clinton, rather than censure him, by a fanatical moralism and a narrow partisanship that, if victorious, could have undermined the sense of restraint and fair play upon which our political system depends. Today some of this ugly partisanship has resurfaced in the conflict over the Florida vote. Some Democrats, demanding a revote, have tried to frame the

issue in terms of racial discrimination, comparing Palm Beach County to Selma, Alabama, while Republicans have tried to block obvious legal remedies like a hand recount with frivolous lawsuits and partisan state rulings. If allowed to continue for another month or so, these self-serving efforts would threaten public confidence in the political system and spawn a bitterness that could poison relations between the parties for years to come.

But the politicians will probably pull back before they reach this precipice. And that's because Americans will condemn whomever they perceive to be unfairly prolonging the deadlock. They'll do so because today—unlike in 1876, and for better or worse—they don't care all that passionately who wins. ■

Intellectuals whiff on the recount.

Nutty Professors

By PETER BERKOWITZ

PARTISANSHIP HAS RUN rampant in Indecision 2000. The candidates, the lawyers, the pundits—even many of the voters—have jumped from one legal and ethical argument to the next to justify the outcome they want. But if there's one group you'd think would stay above the partisan fray, it's America's leading professors—intellectuals with historical perspective, time for study and contemplation, and a devotion to constitutional procedure.

You'd think so. And you'd be wrong. Because last week some of the nation's best-known liberal academics proved that they too can place partisanship ahead of scholarship. They did so by joining the "Emergency Committee of Concerned Citizens 2000" and running a pair of hastily composed advertisements in *The New York Times*. The scholars' ostensible goal was to "preserve the dignity and legitimacy of American democracy." But instead their clumsily spun partisan proclamation exposed to ridicule the ideal of reasoned inquiry on which their professional authority, and in no small measure the dignity and legitimacy of American democracy, depend.

The committee's first ad began on a note of gracious high-mindedness. "The outcome of last Tuesday's election is threatening to produce a constitutional crisis," the ad said. "This threat must be addressed with utmost solemnity and fairness to sustain the legitimacy of our national political process." And then, though praising Bush for conducting himself honorably, it solemnly proceeded to play unfair. "[T]here is good reason to believe," the ad continued, "that Vice President Gore has been elected president by a clear constitutional majority of the popular vote and the electoral college."

Of course, there's nothing "clear" about Al Gore's tiny popular plurality. As the ad went to press, there remained

millions of uncounted absentee ballots, which could still swing the popular vote back to Bush. But even worse is the suggestion that the popular vote—whichever way it goes—has any constitutional significance. The phrase "constitutional majority of the popular vote and the electoral college" is nonsensical. As even Gore has acknowledged, the electoral college is the only rightful arbiter of presidential succession. After warning of a "constitutional crisis," the ad's signers sow the kind of confusion that makes one more likely.

Some of the committee's members could perhaps be forgiven such twaddle. You don't expect Robert DeNiro, Nora Ephron, or Bianca Jagger to have mastered the Constitution's finer points. But surely eminent professors of law—like Bruce Ackerman, Ronald Dworkin, and Cass Sunstein—ought to know better, as should prominent historians (Peter Gay). Rosie O'Donnell might be excused for arguing that "[t]o preserve the dignity and legitimacy of American democracy, it is essential to remove any hint of inaccuracy in the final result," as the ad urged. But a serious scholar like Princeton's Sean Wilentz must realize that removing "any hint of inaccuracy" is simply not possible, given the margin

THE ELECTION CRISIS

The outcome of last Tuesday's election is threatening to produce a constitutional crisis. This threat must be addressed with utmost solemnity and fairness to sustain the legitimacy of our national political process.

Vice President Al Gore has apparently won the popular vote for President. Voting irregularities in Palm Beach County, and elsewhere in Florida, suggest that as many as 19,000 Gore votes may have been nullified and that thousands of other voters may have been improperly turned away—enough to make Al Gore the clear winner of Florida's popular vote and 25 electoral votes. In short, there is good reason to believe that Vice President Gore has been elected President by a clear constitutional majority of the popular vote and the Electoral College.

Governor George W. Bush has conducted himself honorably, with the laudable goal, shared by everyone, of ensuring that the election is settled as quickly as possible. He has also proceeded, in some of his statements and actions, as if his election is assured. This is premature.

To preserve the dignity and legitimacy of American democracy, it is essential to remove any hint of inaccuracy in the final result. Although we respect the efforts of the Florida State Election Commission and both candidates to achieve an accurate tally, we believe that the serious and credible allegations of inaccuracies and irregularities require a definitive conclusion.

The question we now face is how to remedy the situation. Perhaps a bipartisan National Electoral Commission of the Congress and the Supreme Court will have to settle the matter, based on the precedent set in resolving the disputed election of 1876. However, we believe that Florida officials can help ensure that the outcome is beyond reproach or suspicion.

WE THEREFORE CALL UPON THE FLORIDA ELECTION COMMISSION TO EXPLORE EVERY OPTION, INCLUDING SCHEDULING AND SUPERVISING NEW ELECTIONS IN PALM BEACH COUNTY, AS SOON AS POSSIBLE. NOTHING LESS, WE BELIEVE, CAN PRESERVE THE FAITH OF THE PEOPLE UPON WHICH OUR ENTIRE POLITICAL SYSTEM RESTS.

Emergency Committee of Concerned Citizens 2000
(Partial list; list in formation)

Peter Ackerman, Yale University	Peter Cox, Yale University	Rosie O'Donnell
Paul Revere	Clifford Geertz, Institute for Advanced Study	Gerald Posner
Leah Bigley	Todd Gitlin, New York University	Jane Rosenthal
John Bingham	Mary Gordon	Glenn Stein
Robert DeNiro	Bianca Jagger	Cass Sunstein, University of Chicago
E.J. Dionizio	Wendy Lesser, The New York Review	Michael Walzer, Institute for Advanced Study
Ronald Dworkin, New York University	Arthur Miller	Harvey Weinstein
Nora Ephron	Toni Morrison	Sean Wilentz, Princeton University
Harold Evans	Paul Newman	Joanne Woodward
James Talmage		

To join this group of concerned citizens e-mail at eccc2000@usa.com or write us at PMB #187, 411 Avenue of the Americas NY, NY 10011

Contributions listed for identification purposes only.

for human error inherent in any voting system, and particularly in the alternatives suggested as remedies in this case.

THE FOLLOW-UP AD, which appeared the next day, was even more presumptuous. This time, the committee took it upon itself to speak for the entire nation: The ad appeared under the title "We the People." At the very moment the country had shown itself to be profoundly ambivalent, a small group of unelected private citizens presumed to speak with the people's voice and to propose in the people's name an optimal solution to the Florida election. Needless to say, they did so without including in their list of signatories a single prominent centrist Democrat, to say nothing of a Republican or recognizable conservative.

More incredibly, "We the People" did not include many of the people listed among its signatories. Ackerman, Dworkin, and Sunstein say they never saw the second ad, did not sign it, and do not approve of it. It was Harold Evans, former editor-in-chief of the New York *Daily News*, who took the lead in preparing it. He drew on the first ad but, owing to space constraints, distilled what he took to be the essence, and, owing to time constraints, the distillation was not circulated widely.

And what did the rump committee propose on Saturday as the "quickest, fairest, and most democratic" way to resolve the controversy? Insisting its proposal "has nothing to do with the rights or wrongs of the electoral college or party politics," the committee proclaimed that the solution was "to ask the people who know best: the voters of Palm Beach County. Those who voted on November 7 should be asked to vote again as soon as possible, without pressure from any party, but under the strictest scrutiny. And there should be an accurate hand count in certain counties under question."

Lo and behold, the committee's proposal tracked the Gore campaign's developing strategy. It didn't just track it generally—to a Republican, after all, a new vote in heavily Democratic Palm Beach County is hardly free of "party politics"—it tracked it day to day. On Friday, when the Gore camp was eyeing a revote, the committee's ad stressed that option. By Saturday, after Team Gore had shifted its emphasis to a recount, by hand, the committee's new ad drew attention to that remedy as well. Not a hand count throughout Florida, mind you, but a hand count "in certain counties." Could it be that the committee meant exactly the counties for which the Gore campaign was vigorously lobbying?

This has been a long time coming. It's no coincidence that some of the committee members took high-profile, highly partisan roles in the Clinton impeachment fight two years ago. Now they're at it again. When scholars do what partisans do—fudge the facts, bend the truth, and pass off political judgments as emanations from the Constitution or the people or universal reason—they aggravate democratic distrust of intellectuals and ideas. They accelerate the cheapening of words. And they exacerbate the creeping anxiety that there is no such thing as objective truth—that reason is just a clever disguise for will and self-interest. Once the dust from this remarkable contest settles, we should consider whether democracy, which depends on both scholarship and partisanship, might benefit from professors who honor the distinction. ■

Why voters love Democratic millionaires. The Green Party

By NOAM SCHEIBER

IN LATE SEPTEMBER, Minnesota tycoon Mark Dayton's bid for a U.S. Senate seat looked as if it was in trouble. Although Dayton had been leading in the polls for weeks—and although his opponent, Rod Grams, was widely considered the most vulnerable Republican incumbent in the country—a local newspaper had just discovered that Dayton owned a large financial stake in several pharmaceutical companies. Adding a prescription-drug benefit to Medicare had been central to Dayton's campaign; in his speeches, he frequently denounced pharmaceutical companies as "drug lords." But now it was clear that Dayton had become rich partly by investing in the very companies he'd spent the last few months vilifying. "Owning stocks or having any kind of assets is not bad," Grams told the *Minneapolis Star Tribune*, pouncing on the news. "But being a hypocrite and going after the people you've profited from is."

But Grams's charge fell flat. Dayton quickly sold his stock, told the voters he had made a mistake, and returned to his populist message. And on Election Day the heir to the \$1.5 billion Target fortune cruised to a five-point win. Voters didn't mind the apparent hypocrisy; indeed, say those close to the race, the public was heartened that a guy with so much money seemed so intent on helping the non-rich. As Bill Morris, a former Minnesota Republican Party chairman, conceded to the *Star Tribune*, "The perception was that [Dayton] gave back, and he didn't have to."

Dayton wasn't the only self-financed millionaire the voters embraced this year. In Wisconsin, multimillionaire Milwaukee Bucks owner Herb Kohl bankrolled his third straight self-financed victory. In Washington state, it looks as if Maria Cantwell, a high-tech executive who financed her own campaign, has knocked off three-term incumbent Slade Gorton, despite Gorton's charge that Cantwell was "spending her own money so recklessly." And, in New Jersey, former Goldman Sachs CEO Jon Corzine won a Senate seat amid endless allegations that he was trying to buy the election. "The issues," *The New York Times* editorialized, "have unfortunately been overshadowed by Mr. Corzine's extravagant personal spending on television ads and his blatant use of money to secure political endorsements."

Why didn't such criticisms stick? Perhaps because the winning millionaires were all liberal Democrats. Dayton, Kohl, Cantwell, and Corzine all promised significant new spending on health care and education, while attacking GOP tax cuts. Most pundits consider such old-fashioned, redistributive populism a political loser, but it looks as if there's one group of politicians for whom it is a valuable, maybe even essential, element of campaign strategy: the million-

aires whose personal fortunes it would hit the hardest.

There's nothing terribly new about candidates spending their own money on political campaigns. In 1954, Democrat Averell Harriman dipped into his railroad fortune to win New York's governorship. Another self-financed tycoon, Republican Nelson Rockefeller, ousted him in 1958. But in modern times successful self-financers have been a relative rarity. As late as the 1980s, only a handful of would-be senators financed their own campaigns, among them Pennsylvania's John Heinz, New Jersey's Frank Lautenberg, and Nevada's Chic Hecht.

BUT IN RECENT years, as the cost of campaigning has exploded, candidates who bring millions to the table have gained an ever-greater edge. The problem is that such wealth raises suspicions among middle-class voters predisposed to see millionaires as selfish. And the problem for Republicans is that their policy agenda—tax breaks for the rich and reduced regulation of big business—often confirms that prejudice. Consider billionaire Steve Forbes's difficulty in promoting a flat tax (from which he would reap enormous personal benefits). Or, better yet, look at what happened to Atlanta businessman Guy Millner four years ago. Millner spent some \$6 million in his Senate race against Democrat Max Cleland. And while his campaign spending alone didn't alienate many voters, it allowed Cleland to exploit reports that Millner had eluded income taxes in 1991. "Guy Millner plays by a different set of rules," one particularly effective Cleland TV spot declared. In the end, Millner lost, even though he outspent Cleland six to one.

For Democrats, on the other hand, a redistributive policy agenda counteracts the "greedy" stereotype. When Herb Kohl first ran, former Lautenberg pollster Paul Maslin recalls, the popular Bucks owner boasted that he was the "biggest single taxpayer" in Wisconsin and took every opportunity to burnish his image as a fortunate son giving back to his community. His contention that he and other super-rich citizens should pay higher taxes neutralized charges that he was buying the election: Why, after all, would you buy an election to make yourself *less* wealthy? What's more, Kohl's business acumen helped deflate charges that, as a liberal, he was fiscally irresponsible. Running as a Democratic millionaire, it turns out, is the best of both worlds.

And Democratic millionaires have one more advantage over their Republican counterparts. GOP dogma holds that campaign finance reform violates the right to free speech. Persuasive or not, that argument undercuts Republicans' ability to attack opponents for spending lavishly on their campaigns. Gorton, for instance, blasted Cantwell's campaign spending, hoping to connect it to her "old-style government solutions." But he couldn't make the more obvious argument—that her campaign spending gave her an unfair advantage—because it would have drawn attention to his own hostility to reform.

None of this has been lost on the national Democratic Party, whose officials realize that, on top of their other strengths, Democratic millionaires don't compete for fundraising dollars with the party's other candidates. As Demo-

cratic Senatorial Campaign Committee Chairman Robert Torricelli told *The Wall Street Journal* last month, "We knew from the outset it would be critical to have several candidates that do not need a subsidy from the national party." To that sentiment Torricelli might have added, "And we knew from the outset that our millionaires could win." ■

Is your software screwing up? Tough. Bugging Out

By BRENDAN I. KOERNER

EVERY PC USER is familiar with the notorious "blue screen of death," the azure void that appears when Windows crashes. And even amateur geeks recognize the ubiquitous "Fatal Error!" warnings that pop up seconds before a program implodes, zapping into oblivion hours of spreadsheeting or a spirited game of Tomb Raider.

For the most part, these failures amount to little more than teeth-gnashing nuisances. But the consequences of buggy software are not always so benign, a lesson the folks at M.A. Mortenson Company learned the hard way. In 1993, the Minneapolis-based construction firm purchased a specialized program called Bid Analysis, manufactured by Timberline Software Corporation of Beaverton, Oregon. Months later, Mortenson used the software to prepare a successful bid for a Seattle hospital project. So far, so good—until some old-fashioned pen-and-pencil number-crunching revealed that Bid Analysis had erroneously suggested a figure \$1.95 million too low.

Mortenson blamed the miscalculation on a software glitch and alleged that Timberline had covered up the flaw. The company sued Timberline in Washington's Kings County Superior Court, alleging breach of warranty and seeking to recoup its \$1.95 million. "Our position wasn't that you're guaranteeing the stuff to be perfect," says Mortenson attorney Bradley Powell, "but you've got to hold it to a negligence standard.... It wouldn't have been that difficult for [Timberline] to send out a notice to its customers there—'Hey, there's a bug, don't do this, or do that.'"

But Timberline, with the help of a Microsoft-backed trade group called the Business Software Alliance (BSA), countered that the license attached to Bid Analysis, which disclaimed all liability, was ironclad. And the court agreed, tossing out the case. This past May, the Washington State Supreme Court upheld the dismissal, finding that it was not even necessary for Mortenson "to actually read the agreement in order to be bound by it." Everyone, the court concluded, should know that software comes "as is," like any used

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car or yard-sale tchotchke.

Mortenson v. Timberline was a landmark case in the software industry's campaign to secure a unique privilege: zero liability, no matter how negligent a program's design or implementation. The clever mandarins of the multibillion-dollar industry realize that a blanket exemption from civil liability will free them from the pricey headaches—tort lawyers, massive insurance—that plague other industries. Through the courts and state legislatures, they hope to achieve just that. And if they do, even as computer software runs more and more of the paraphernalia of our lives—from cars to smoke detectors—the cost will be measured in more than just money.

Once upon a time, the wordy contracts that accompany shrink-wrapped software were not considered inviolable. In 1991, for example, a federal court held in *Step-Saver Data Systems v. Wyse Technology* that a purchaser did not have to abide by onerous license terms if those terms were not revealed until after the product was purchased.

Of course, in new-economy time, 1991 was eons ago. In the interim, software titans developed into crafty political and legal operators—not to mention revered icons. Thus the BSA's involvement in *Mortenson*. And, perhaps more important, the industry's efforts on behalf of something called the Uniform Computer Information Transactions Act (UCITA), which would grant vendors sweeping authority to write one-sided contracts. Championed by the Digital Commerce Coalition—a lobby supported by such digital heavyweights as Microsoft, Compaq, and Intel—the law, which requires state-by-state approval, will be considered in all 50 states within the next five years.

Tellingly, the first two states to pass UCITA were Maryland and Virginia, both hell-bent on competing with the dueling Silicons, Valley and Alley. "People want to signal to high-tech businesses, 'We're a friendly environment, come here and stay here,'" says Jean Braucher, a University of Arizona law professor. "That's what actually happened in Maryland and Virginia. They played the two off each other—they said, 'If Maryland doesn't do it first, we'll move all the high-tech jobs to Virginia.'"

UCITA is a mind-numbingly complex—and, some grumble, sloppily written—document, and even the brightest legal minds can't agree on all its implications. But it would essentially buttress *Mortenson*, codifying the software industry's ability to write licenses as it sees fit. Users would have little recourse in the event of disaster; once they clicked on the "I Agree" button during the installation process, they would waive their right to substantive legal action. Perhaps most troubling of all, in a reversal of *Step-Saver*, software makers would not be obliged to disclose license terms until the product had already been purchased. Opponents sum up UCITA's repercussions with a catchy aphorism: "Even if they broke it, you bought it."

Software giants say they need these protections because software is inherently buggy. But, while that proposition may sound feasible to the layman—how many Americans can write a single line of Perl or C++?—it is a myth. Far from being inevitable, buggy software stems from software-industry business decisions. Intent on stocking Best Buy's

shelves with newer and newer versions of their products, manufacturers often shortchange engineering "best practices": Programs regularly ship before they've been cleansed of myriad major flaws, from backdoor passwords to logic gaffes to viruses. Software firms also churn out dreck by loading products with bells and whistles or issuing "improved" versions that lure consumers into paying for pointless updates. As so-called bloatware is imbued with millions of additional lines of code, it invariably becomes buggier. In short, glitch-ridden software is prevalent because companies insist on including baroque digital flourishes, not because creating good coding is an impossible task.

The software industry's no-liability crusade would be bad enough if it only meant losing your data and screwing up your spreadsheets. But its implications are actually far worse. Off-the-shelf software is increasingly showing up in non-desktop devices. In the next few years, software will be embedded in everything from pagers to SUV engines. Programs responsible for life-or-death tasks have historically been subject to far more rigorous testing than their personal-computer counterparts. But, as desktop software migrates into critical systems—say, hypothetically, a version of Windows that controls a Mack truck's brakes—the potential for catastrophe looms. Mortenson's \$1.95 million debacle pales in comparison.

Another, less tangible, consequence of a liability-free software industry may be America's vaunted position as the global new-economy leader. Should *Mortenson* and UCITA protect American engineering laziness, they would open the door for upstart European and Asian competitors. Save for a few select players, such as Germany's SAP, international software firms have yet to challenge American supremacy. But as expertise diffuses, particularly with the growing availability of open-source code, there is little doubt that other nations will gain.

The software industry counters that research and development would grind to a halt if Joe Q. Public could sue whenever Lotus Notes ate his data. But, as University of Miami law professor Michael Fromkin points out: "We do see technological progress in other industries where we have liability rules. They make new airplanes, right? And I think a Boeing 747 is much more complicated than most software. Clearly, making people liable for their negligence does not stop progress."

In fact, it hasn't even stopped innovation in the technology industry. Just ask Intel. In 1994, the hardware giant faced a wave of class-action suits over a defective Pentium chip. The prospect of ceaseless litigation forced the chip maker to institute a "no questions asked" return policy, and the bug has since been excised. Intel, needless to say, has continued to grow and remains the giant of the chip industry.

Mortenson attorney Bradley Powell was correct in conceding that perfection is impossible. But good software, like good 747s or good microchips, is not a pipe dream, regardless of what the industry's public relations machinery says. The companies simply need a good reason to make it. Unfortunately, if they continue to win the battles being fought in state legislatures and courtrooms across the country, they may not get one. ■

How the Gore campaign came back from the dead.

Overtime

By RYAN LIZZA

WEST PALM BEACH, FLORIDA

IF AL GORE eventually wins Florida and the presidency, historians will likely trace his victory to the early morning hours after he retracted his concession to George W. Bush. In those crucial first hours of November 8, while the Bush campaign was still waiting for the results of Florida's first tally, Team Gore was already beginning to fight a recount the same way it fought the campaign itself: ferociously.

Gore's advisers had actually begun preparing for a recount battle even before Election Day. Weeks before November 7, Joe Sandler, the Democratic National Committee's general counsel and the lawyer who helped defend Maryland Governor Parris Glendening against a recount challenge in 1994, had convened a team to draft a memo on recount laws in every state that might be close. Late on election night, in the Nashville campaign bunker dubbed "the boiler room," Sandler's memo became Team Gore's initial operations manual. "We knew that [Florida] was going to be a battleground," says one Gore recount staffer. "We knew that the law required the canvass to start the next day. We knew that we needed people there to watch the canvass."

Working from a Rolodex of Democratic faithful, Gore staff began putting together a team of field operatives and lawyers to fan out across Florida in search of voting irregularities. "We got as many down there as quick as we could," says one coordinator of the effort. Many of the Gore campaign's get-out-the-vote personnel moved instantly to the recount effort. Jill Alper, the former DNC political director who helped mastermind the Democrats' successful voter-turnout program in 1998, sent dozens of lawyers and get-out-the-vote operatives to Florida on Joe Lieberman's campaign plane. (The plane touched down in Tallahassee at the same time as Florida Governor Jeb Bush's plane from Texas.) A trio of operatives from national field director Michael Whouley's hometown of Boston also pitched in. John Sasso, once Michael Dukakis's chief strategist, is leading recount efforts in Broward County, while Dukakis's former field director, Charlie Baker, is working in Gore's Tallahassee recount headquarters. Jack Corrigan, a Gore campaign lawyer and another former top Dukakis aide who has witnessed several election recounts, is in Palm Beach. Having failed to take back the House or the Senate, many Democrats see the Florida mission as a final crusade. "You pick up the phone and say, 'We need you to get on the plane, we need you there now,' and they are there," says one of Whouley's aides. "It was really quite moving."

The Gore campaign didn't just send people to Florida fast;

it sent the party's top recount experts. In preparation for the incredibly close election, the DNC's Sandler had kept several recount specialists on call for election night. Robert Bauer, who worked on the contested elections of Louisiana Senator Mary Landrieu in 1996 and Nevada Senator Harry Reid in 1998, was immediately dispatched to the Sunshine State. Another recount expert, Chris Sautter, had been asked to spend election night in Nashville in preparation for just such an eventuality. He ended up staying in Washington, but at 4 a.m. on November 8 he got a call from campaign headquarters. "They told me to take a 7:30 a.m. flight to Tallahassee," Sautter recalls. He dropped everything and packed his bags for Florida.

Sautter is a veteran of some of the nastiest and most famous recount battles of recent years. He represented Democrat Frank McCloskey in a recount effort in the 1984 race for Indiana's eighth congressional district against Republican Richard McIntyre. The contest became known as the "bloody eighth": Although the Indiana secretary of state declared McIntyre the winner, Congress, which has the final word in congressional recounts, seated McCloskey. Sautter also helped Virginia Governor Douglas Wilder fend off a recount challenge in his 1989 election, and, along with Bauer, Sautter defended Representative Sam Gejdenson in a 1994 recount that Gejdenson ultimately won in the Connecticut Supreme Court. Sautter also helped California's Loretta Sanchez after defeated Republican Representative Bob Dornan challenged her victory in 1996.

Along with Timothy Downs and Jack Young, both attorneys now working for the Gore recount committee, Sautter wrote a book in 1994 called *The Recount Primer* in which he laid out strategies for just the kind of battle now occurring in Florida. "It's been pretty much the recount guide for Democratic candidates since then," says Sautter. He has been passing out numerous copies of the guide to operatives since he arrived in Florida, and it has served as the political corollary to the DNC legal memo the Gore campaign relied upon on election night.

The Gore campaign's efforts have closely tracked Sautter's recommendations, which he summarized in a 1990 article for *Campaigns and Elections* that later served as the basis for his book. "The best advice to give any candidate unlucky enough to be caught in a recount is to hire a good lawyer," Sautter wrote then. "But you can't conduct a recount without organization. Many recounts—like many close campaigns—are won in the trenches with dedicated, low-paid field staff and volunteers fighting for votes one at a time." That's exactly the kind of minutiae the Gore campaign has been focusing

on in Florida—for instance, going to court in Palm Beach this week to demand that “dimpled” chads be counted as votes after the county adopted a stricter standard. “Practically every recount turns up missed ballots,” writes Sautter, who advises candidates to search for signs of voter intent.

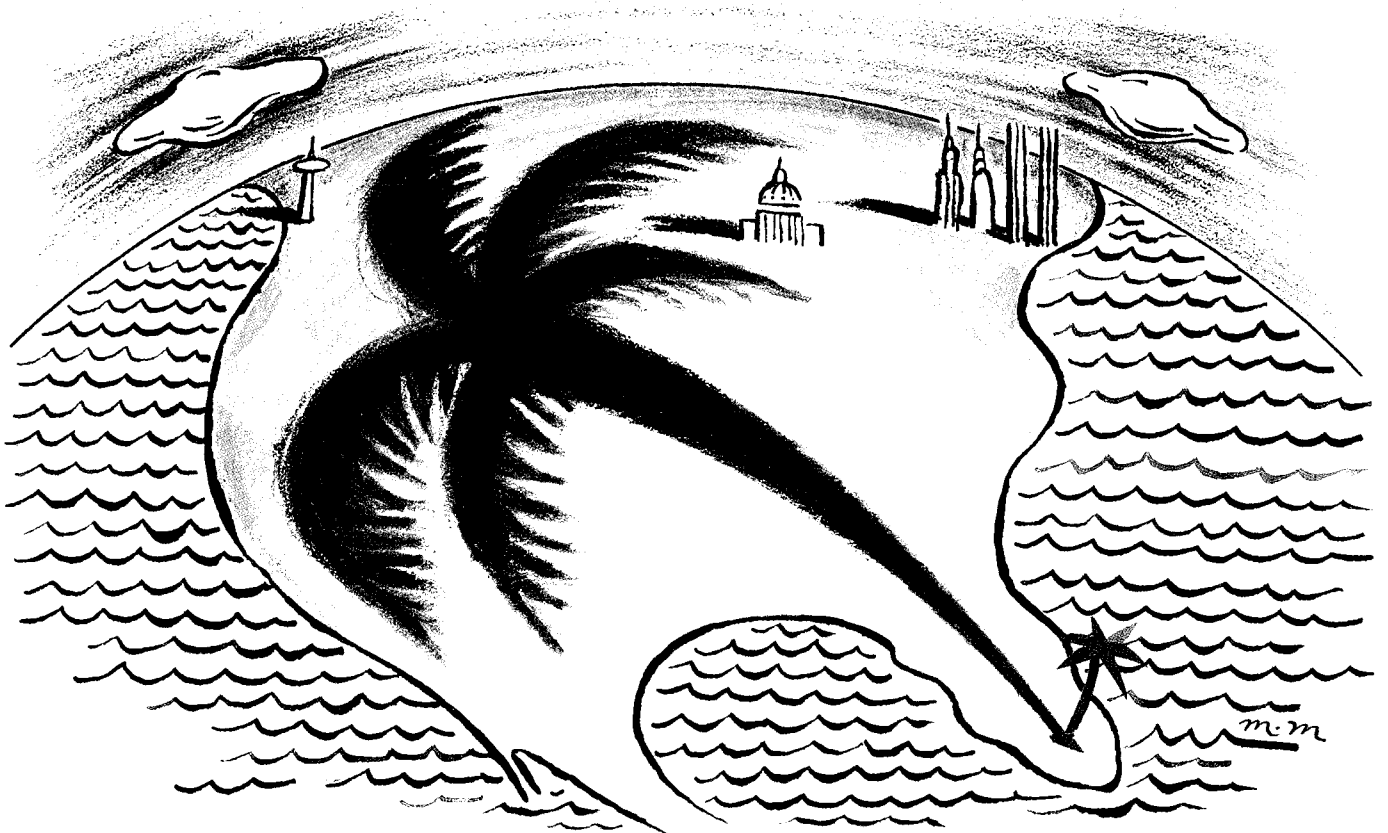
Other advice from Sautter’s 1990 article is also clearly being followed in Florida. He wrote, presciently, “When razor-thin margins separate candidates on election night, the final outcome often turns on complex legal maneuverings and an arduous vote recount conducted in the weeks that follow. If your campaign is unprepared to challenge results, it doesn’t stand a chance.” “If you are behind,” he continued, “and there are reliable reports of problems—such as fraud or eligible voters being turned away—which could affect the outcome, invite the press to investigate complaints.” Sound familiar?

To carry out Sautter’s strategy, the first thing the Gore campaign had to do was gather a massive amount of information. “Under direction of the lawyers, the field operatives had their people collect a lot of data,” says one person involved with the recount effort. “You are only as strong in these things as your data. We made it a priority in the first couple of days to collect a lot of info.” The information collected in the field included the method of voting in every county, examples of undercounting, and anecdotal evidence of any irregularities. One of the biggest efforts took place in Palm Beach County, where Democratic lawyers set up shop in a strip mall where thousands of Palm Beach residents came to sign affidavits attesting to their confusion over the infamous butterfly ballot.

All the election data was collected and stored on a computer, which allowed the campaign in the first 48 hours to decide upon the counties in which it would request manual recounts. “We had a graph on the computer with every county and different kinds of info,” says one top recount adviser. The computer graphed the differences in votes between the election-night count and the recount in each county so the campaign staff could see where the biggest net changes had occurred. And then, with the help of information collected in the field, they tried to determine the causes of the changes.

Ironically, at early meetings of senior Gore officials in Florida, including Ron Klain, Warren Christopher, and Bill Daley, some lawyers said the Gore campaign should offer the proposal the vice president would extend a week later—a statewide hand recount. But, according to one participant in the meetings, Gore officials “were disinclined to file in any county that didn’t have a problem.” (Of course, that’s not entirely true, since the Gore team didn’t initially request hand recounts in Republican-leaning counties where there were irregularities.) After the machine recount showed Bush’s lead dropping to around 300 votes, Gore campaign lawyers were privately ecstatic—confident that they would pick up the rest when the ballots were counted by hand. “It’s pretty rare that the majority of changes go toward one candidate,” says one Gore lawyer. “So for us to pick up fourteen or fifteen hundred votes was very encouraging.”

As this article goes to press, the courts are considering whether hand recounts should proceed. Accordingly, the Democrats are busy with the next—and perhaps last—phase



of their campaign. In order to make sure every potential Gore vote is counted, Sautter has spent the last week in all four contested counties, training Democratic observers who will watch the canvassing boards recount the ballots. He has trained some 400 Democrats already. The trainees get in-depth lessons about the intricacies of chads and other ballot trivia, so they can spot any Gore vote the county vote-counters might miss. Sautter even gives the observers a special form to document any irregularities in the count and provide the campaign with data that could be useful in future court action. The forms show pictures of ballots, which allow the observers actually to record what every

challenged ballot looks like. If one of the county workers confuses a dimpled chad with a tri-chad, Gore's observers will make a note of it. Sautter explains, "For example, if we had a number of pregnant ballots, we could take the notes back and say there was a certain percentage that were pregnant, a certain percentage that comes under the one-chad category, etc. If it goes to court, we can describe everything with some accuracy." A week after election night, the Democrats' post-campaign campaign is more than just up and running. Gore staffers think it may already have won the day. As Sautter puts it, with an air of satisfaction, "My job is largely done." ■

Go ahead: Drag it out.

Speed Kills

By JONATHAN CHAIT

THE MESS IN Florida should be resolved impartially and in accordance with the will of Florida's voters. It's obvious that, in a democracy, those should be the highest principles, right? Actually, no. Most commentators don't seem to think it's obvious at all.

Consider *The New York Times'* editorial three days after the vote. "Florida authorities should make every effort to use this period to try to secure a decision as to whether state law really was violated by the ballot confusion in Palm Beach," the *Times* argued, adding that the complaints "need to be taken seriously." But then the editorial took a strange turn: "It does not, however, seal the case that such lapses should be a reason for a protracted legal challenge that paralyzes the succession process, undermines the finality of presidential elections and makes nervous a world that looks to the United States as a model of political stability." Indeed, the *Times* declared, "Republicans and Democrats alike should look toward the earliest possible date for recognizing the legitimacy of one winner in this election."

In other words, stay out of court and get it over with—even if the vote was unfair, even if it was illegal. In the week following the presidential election, conventional wisdom coalesced around this moral hierarchy. It was summed up in a news analysis by *Times* éminence grise R.W. Apple. Using the classic newspaper convention of quoting only third parties who agree with him, Apple presented his opinion as established fact. (The jump headline on the story actually read, "QUICK RESOLUTION BENEFITS THE NATION AND BOTH CANDIDATES, EXPERTS CONTEND.") The story announced, "By next weekend, a group of scholars and senior politicians interviewed this weekend agreed, the presidential race of 2000 must be resolved, without recourse to the courts."

But why? When did Washington's elder statesmen decide

speed was our democracy's deepest principle and judges democracy's greatest menace? And have they told the voters?

It was a frenzied demand to know the outcome, after all, that led the networks twice to miscall the winner of Florida on election night. And now that same impulse has transmuted into a demand to know the result of the recount. Here is CNN analyst Jeff Greenfield just two days after the election:

You think about things like the markets. You think about the international community. You think about how the United States has always been seen as a bedrock of political stability. I'm not suggesting riots in the streets, but I'm suggesting some real potential problems.

While the media have continued to hyperventilate over the delay's consequences for the markets, international opinion, and the state of democracy, there is zero evidence thus far of any ill effects. The electoral college does not meet until December 18. Certainly a presidential transition takes time, but much of the work can be done in the absence of a final outcome. (George W. Bush, in fact, says that he, along with his likely chief of staff, Andy Card, has already begun preparations.) Will the next president get off to a slow start? Probably. But, compared to a taint of illegitimacy that could infect not only the next administration but the entire democratic process, the costs of an abbreviated transition are insignificant.

Yet the Beltway's insistence on a speedy resolution—and its assumption that the public shares that insistence—stands as the central obstacle to a more accurate vote count. When evidence of voting irregularities in Palm Beach first surfaced, pundits bludgeoned Al Gore for his refusal to forswear legal action. Last weekend, it appeared that Gore could win selec-

tive hand counts held only in Democratic counties, since Bush, having missed the deadline to file for recounts, would be unable to demand them in precincts favorable to him. As this issue goes to press, Bush has rebutted Gore's offer of a statewide recount, calculating that he can run out the clock before Gore obtains redress. In all these instances, each side has based its strategy on the idea that if it can hold on to a lead, public pressure will force its opponent to concede, regardless of how ill-gotten its victory.

THE STRANGE DETERMINATION that the recount must be fast, as opposed to just, is rooted in several interrelated assumptions. The most prominent is the belief that the election is merely a biographical drama about two interesting characters named George Bush and Al Gore and contains no broader significance. This, incidentally, is the same assumption that drove most of the coverage of the campaign itself. Apple's story quotes Senator Pat Moynihan as saying that "there is no great ideological chasm dividing the candidates—each one has his prescription-drugs plan, each one has his tax-cut program—and the country obviously thinks one would do about as well as the other."

This premise (which is wrong, as *TNR* readers have seen me argue with obsessive futility) leads commentators to suggest that it matters more how quickly America decides on its new president than who gets the nod. "The country is much more important to me than whether Al Gore gets his final ambition or George Bush," said CBS political chief Bob Schieffer. "How much is winning this election worth?" scolded CNN analyst Bill Schneider. "Is it worth creating a constitutional crisis?" In this analysis, the only interests at stake are those of two men and their advisers; everybody else has no interest but a quick resolution.

But that's not true. For one thing, the voters, unlike the pundits, don't view Bush and Gore as interchangeable. When a *CNN/Time* poll asked voters on November 10 who they thought would make a better president, 88 percent of Gore voters said Gore, and 90 percent of Bush voters said Bush; only 9 percent of those surveyed said they weren't sure. But even if these voters didn't have strong preferences—even if they agreed with Moynihan that "one would do about as well as the other"—that's hardly cause to ignore their slight preference, as expressed in a binding ballot. After all, in the United States a vote is a vote, regardless of the passion with which it was cast. The punditocracy's insistence that it ultimately doesn't matter who wins is little more than an excuse to avoid the unpleasantness of determining who actually won.

The rush to resolution, like so many other Washington dramas, has been turned into a morality play in which conflict is always evil and bipartisanship is always good. Thus, Richard Nixon, who supposedly refused to contest the fraud that cost him the 1960 election, is held up as an example to both candidates that they should concede regardless of the merits of their cases. But if Nixon really did lose an election due to fraud (actually, as Nixon historian and former *TNR* staffer David Greenberg has shown, he didn't), why praise him for giving in?

To make sure speed and statesmanship carry the day,

respected political veterans are brought in to urge their party's nominee to do the right thing. Thus far the part has been played by Democratic senators such as Robert Torricelli and John Breaux. The latter told *The Washington Post*, "To go two or three weeks without knowing who had been elected president would be unacceptable to most Americans." In turn, the *Post* identified Breaux as "a moderate respected by both parties"—a label that conferred upon him an unassailable moral authority.

In most cases, it's perfectly logical to lend more weight to politicians who speak against their own party's interest. The trouble is, it's not at all clear that figures like Torricelli, who's in charge of electing Democrats to the Senate, and Breaux, one of his caucus's most conservative members, fall into that category. If Bush wins, he would toil under a cloud of illegitimacy, while Gore would reap a bonanza of righteous indignation on his behalf. So, rather than try to pit Gore's limited political skills against a hostile Congress, Democrats may well be better off letting the GOP control both branches of government. They could blame Republicans for anything that goes wrong and run against Bush's stolen election in the congressional races of 2002 and the presidential contest two years after that.

But, while that scenario may be good for ambitious congressional Democrats like Torricelli and Breaux, it certainly wouldn't be good for the country. (The same applies to Republicans who, making the same calculation, urge Bush to concede.) Far from putting their country ahead of their party, advocates of surrender in Congress may be doing just the opposite.

Buttressing the consensus in favor of haste is a deep fatalism about potential remedies. Another story in the *Post*—"LOOMING FIGHT COULD TAKE A PAINFUL TOLL"—has Frank Fahrenkopf, a former GOP chairman, observing that "in every election, you have mistakes." Perfection is impossible; no correction comes without a downside; therefore, we must make do with a result we know to be wrong.

Apply this logic to, say, the Palm Beach ballot. The statistical evidence of an anomaly is overwhelming—Pat Buchanan's support came in the most pro-Gore precincts. Almost any fair-minded person would admit that this is a failure of some kind, at least; the majority of Florida's voters should, ideally, have their preferences reflected in the result. But, with the exception of a few Democratic diehards, this injustice is met with a shrug. Even assuming the ballot to be illegal—a proposition that should be left to better legal minds than mine—impartial commentators like the *Times*' editors still oppose corrective action.

And yet it is easy to imagine a remedy that would more accurately reflect the will of the voters. One solution, suggested by University of Illinois Law School Professor David D. Meyer, would be to presume that all double-punched ballots indicate support for one of the candidates marked and to divvy up votes between the two in proportion to the support each received in the county.

Another solution would be to hold a revote confined to those who already voted. The main objection, that Nader voters would defect to Gore, could be resolved by subtracting any change in the Nader vote from Gore's new total. Mean-

while, Buchanan loyalists could switch to Bush without any adjustment. If Republicans really believe there are thousands of Buchananites in Palm Beach, they could only gain from such an arrangement.

If the recount fight descends to the point where neither side would accept a loss as legitimate, we might consider an even more radical settlement: revote the entire state. In a moment of weakness—when it appeared, last Sunday, that Gore had the upper hand—Senate Majority Leader Trent Lott proposed this very idea. Both candidates would have to agree, and Florida's electors would have to pledge to abide by the outcome. There would be sufficient oversight to ensure probably the cleanest election in American history, and neither side's partisans would have cause to besmirch the outcome.

I know, I know. All these ideas have downsides. The point here is not to press a specific solution but to challenge the heavy presumption in favor of the status quo. Conventional wisdom holds that any remedy imposed by judicial fiat would carry no legitimacy with the public. But compared to what? As matters stand at press time, the election may be determined by a Bush crony's ability to manipulate the machinery of the state to achieve a preordained outcome that violates the will of several counties. It's hard to imagine a result less legitimate than that.

The presumption against court-imposed solutions is understandable. Liberalism is only now recovering from a

decades-long urge to try to win in court what it could not achieve through the political process. Moderates rightly believe that courts should decide political questions only as a last resort.

But we've reached that last resort. For a week now, the political system has shown itself virtually incapable of determining a fair outcome to the Florida vote. To date every elected official has acted in accordance with his or her party's interest. Republican Secretary of State Katherine Harris tosses out orders to delay or stymie hand-counting; Democratic Attorney General Bob Butterworth countermands her. The whole affair has grown so sordid that barely anyone expects anything else anymore. Why should we? Politicians are rewarded for party loyalty, particularly in times of great political stress. Judges—while hardly immune from partisanship—are much better insulated from political pressure. Last Tuesday, for instance, in one of the few bright spots in a depressing week, Circuit Court Judge Terry Lewis issued a ruling that both parties found acceptable. And, while future rulings may prove more divisive, no judge alive could delegitimize this election as much as Harris already has.

The ideal remains an election completed quickly and without legal challenge. But that possibility no longer exists. Expeditionousness and judicial restraint are now set squarely against democratic legitimacy, and the choice is not even close. ■

Why the U.S. Supreme Court would make things worse. Misjudge

By JEFFREY ROSEN

IT IS JANUARY 5, 2001. The state of Florida has submitted two slates of electors to Congress, one for George W. Bush and one for Al Gore. To decide which to accept, Congress has appointed an electoral commission, composed of five senators, five representatives, and five Supreme Court justices. The commission is divided evenly along party lines, and the fate of the nation hangs on the mystical deliberations of the only undecided member, Justice Sandra Day O'Connor. She is believed to lean toward Gore because of her devotion to federalism, which she thinks Bush has betrayed in his electoral litigation. But at midnight on the day before the vote, Justice O'Connor receives an urgent visit at home from fellow commissioner Senator Orrin Hatch, who tells her Gore's election would ruin the country. Their conversation ends in a tearful prayer vigil presided over by Mr. O'Connor in his dressing gown. The next day, the Delphic justice casts the tie-breaking vote for the Republican electors, throwing the presidency to Bush.

A Democrat's paranoid fantasy? It is, in fact, exactly what

happened in 1876, when the House and Senate appointed Supreme Court justices to help Congress choose between competing electoral slates from Florida. And it could happen again. As the state and local officials in charge of resolving this crisis prove themselves to be transparently partisan, calls for intervention from the nation's highest and ostensibly most impartial authority—the U.S. Supreme Court—grow louder every day. "Let the High Court count," Robert Bartley writes in *The Wall Street Journal*. "[T]he Supreme Court is the one body with the prestige to lend legitimacy to any decision." Noted legal scholar Geraldo Rivera agrees. "The only sure bet," he announced, "is that the United States Supreme Court will inevitably be called upon to play the role of King Solomon."

But asking the justices to intervene—as part of a special electoral commission or through a decisive ruling from the Supreme Court itself—would be a serious mistake. The harsh reality of this battle is that partisanship is unavoidable; it will infect whomever we entrust with decision-making power. Accordingly, the best we can do is to confine

this power to the partisan officials—in Florida and ultimately in Congress—whom the voters can eventually hold accountable for the outcome. Moreover, the relevant legal disputes involve questions of state law, over which the Florida Supreme Court has ultimate authority. By resisting the urge to intervene, the Supreme Court can preserve its own legitimacy at the very moment when the other two branches of national government will be unmasked before a divided nation as narrowly self-interested. This may not be an inspiring outcome, but, if history is any guide, the alternative is far worse.

Consider what happened in 1876. It was clear that Samuel Tilden, the Democratic candidate, had won the popular vote. But the electoral vote remained in doubt. In three Southern states—Florida, Louisiana, and South Carolina—there were convincing allegations that Democratic local officials were refusing to count the votes of African Americans and other Republican voters. In Florida, the Republican board of canvassers received the certificates of electors, heard evidence of fraud, and adjusted the returns when they found the evidence persuasive. They chose Republican electors, who would count the state's electoral votes for Hayes.

But the Democrats in Florida refused to accept this result. They felt that, in adjusting the vote, the canvassing board had wrongly ignored votes for Tilden. The Florida legislature, controlled by Democrats, ordered the Florida secretary of state and attorney general to do a recount. This produced a victory for Tilden, certified by the legislature, and a second set of electors ready to cast their votes accordingly. But the Republican canvassing board refused to accept the results of the recount. The state, therefore, sent two slates of electors to Washington: one for Hayes, certified by the canvassing board, and the other for Tilden, certified by the legislature.

And so the Forty-fourth Congress faced a crucial decision: Which set of electors should it recognize? Democrats and Republicans agreed that it would be intolerable to allow the president of the Senate, a Republican, to choose between the competing Florida slates on his own. But they also thought it would be a mistake to submit the contest to the federal courts. The Constitution, after all, doesn't contemplate any direct role for the federal judiciary in reviewing electoral disputes. So the House and Senate negotiated a purportedly bipartisan compromise: an electoral commission composed of five senators, five representatives, and five Supreme Court justices.

The justices were added to provide a veneer of neutrality: The informal understanding was that they would be balanced along party lines, with two Democrats, two Republicans, and David Davis, who was considered an independent. But Davis never made it to the commission. At the last minute, under pressure from Tilden's sleazy nephew, William T. Pelton, Democrats in the Illinois legislature elected Davis to the U.S. Senate. Pelton thought this would entice Davis to vote for Tilden. Instead, Davis—aware of the conflict of interest—recused himself and was replaced by Justice Joseph Bradley.

Although a Republican, Bradley was considered one of the least political and most lawyerly members of the Court. Some believed he leaned toward the Democrats, but at the last

minute he voted with the Republicans. In a "secret history" of the disputed election, Abram Hewitt, a Democratic representative from New York, insisted that, on the day before the vote, Bradley was visited at home after midnight by a Republican senator and fellow member of the commission, who pleaded with Bradley to choose Hayes. According to his biographer, Hewitt said Bradley was swayed by the argument that "whatever the strict legal equities, it would be a national disaster if the government fell into Democratic hands." Mrs. Bradley, "a highly religious woman and a strong partisan," was said to have "come downstairs in her dressing gown and prayed with her husband."

Bradley's vote produced an eight-to-seven ruling, along party lines, to ignore the evidence supplied by the state legislature and recognize the certificates of the Republican canvassing board. Bradley concluded that Congress had no power to second-guess the electoral determinations of a state canvassing board. "[T]he final action of the board," he wrote, "must be accepted as the action of the State." From a legal standpoint, his decision was perfectly plausible. But Democrats vilified him, insisting he had changed his mind at the last minute out of partisan loyalty. The Democratic House and Republican Senate ultimately split on whether to accept the commission's decision, again along party lines—which meant, under the previously agreed-upon rules, that the decision would stand.

Outraged Democrats contemplated a Senate filibuster to prevent Congress from selecting a president before the constitutional deadline in March. But, in exchange for a promise by Republicans to withdraw federal troops from the South, House Democrats relented—and Hayes became president by one electoral vote. Instead of removing politics from the final decision, the Supreme Court justices on the election commission ended up as tainted by partisanship as everyone else.

THERE IS STILL time to resolve the electoral crisis of 2000 in a better way. The key to avoiding a recapitulation of 1876 is to leave the decision to political actors in Florida and Congress, guided by the Florida courts rather than by the U.S. Supreme Court. Yet the Bush campaign attempted to thwart this constitutionally approved procedure last week by asking a federal court to block a Florida recount.

Never mind that federal court intervention in a state electoral dispute contradicted the principles of federalism, strict constructionism, and judicial restraint that Bush championed during the campaign. The case itself was unusually weak. Bush's lawyers claimed Florida's manual recount law is unconstitutional because, by allowing human beings to decide whether and how to recount ballots, the law gives government officials "standardless discretion." But the Constitution's framers could not have intended to require recounts by voting machines, which didn't exist in the eighteenth century. Far from exercising standardless discretion, furthermore, the Palm Beach County canvassing board in 1990 adopted a standard that allows only hanging or partially punched chads to be counted as votes. The Palm Beach standard for manual recounts is actually more rigorous than the one in Texas, which Bush supported. That law allows the

manual recounting of “pregnant,” “dimpled,” and “pinhole” chads as well.

It's true that the Texas standard for manual recounts is uniform throughout the state, while Florida allows individual counties to decide for themselves which standard to adopt. By allowing individual counties to choose different standards for recounts, Bush's lawyers suggested, Florida ensures that “identical ballots in two different counties will be treated differently,” depriving each citizen of an equally weighted vote. But this argument calls into question the entire system of county control of voting. Some counties have voting machines, some have paper ballots, some have butterfly ballots. If variation in voting and counting procedures from county to county is unconstitutional, then the butterfly ballot itself is unconstitutional: Each county would have to adopt the same ballot form and recounting procedure to ensure uniformity.

In a sober opinion, Judge Donald M. Middlebrooks rejected Bush's claim without blinking. “This well-settled principle—that federal courts interfere in state elections as a last resort—is basic to federalism, and we should take it to heart,” he wrote, adding that the Constitution assigns to the states the power to appoint presidential electors. Bush announced that he will appeal the ruling and may continue to appeal it to the U.S. Supreme Court. If the Court's allegiance to federalism means anything, it will decline to intervene. Meanwhile, in the next few days, much of the pending state litigation is being consolidated in the Florida Supreme Court, where it belongs.

But that raises another question: Will the Gore campaign abide by the rulings of Florida's courts and Florida's officials—decisions that could well go against the vice president? As I write, the central question is whether hand-recounted ballots in heavily Democratic counties will be certified as part of Florida's final tally. Under Florida law, the ultimate authority over this matter lies with the three-member state canvassing board from which Governor Jeb Bush recused himself. It includes Katherine Harris, the now-infamous Republican secretary of state; another Republican; and a Democrat sympathetic to George W. Bush. A lower Florida court held that the secretary of state must exercise “sound discretion” if she refuses to certify the hand counts. Now that Harris has announced her refusal to certify them, the Florida Supreme Court could conclude that she violated the lower court's ruling or otherwise thwarted the will of the voters by failing to exercise any discretion at all.

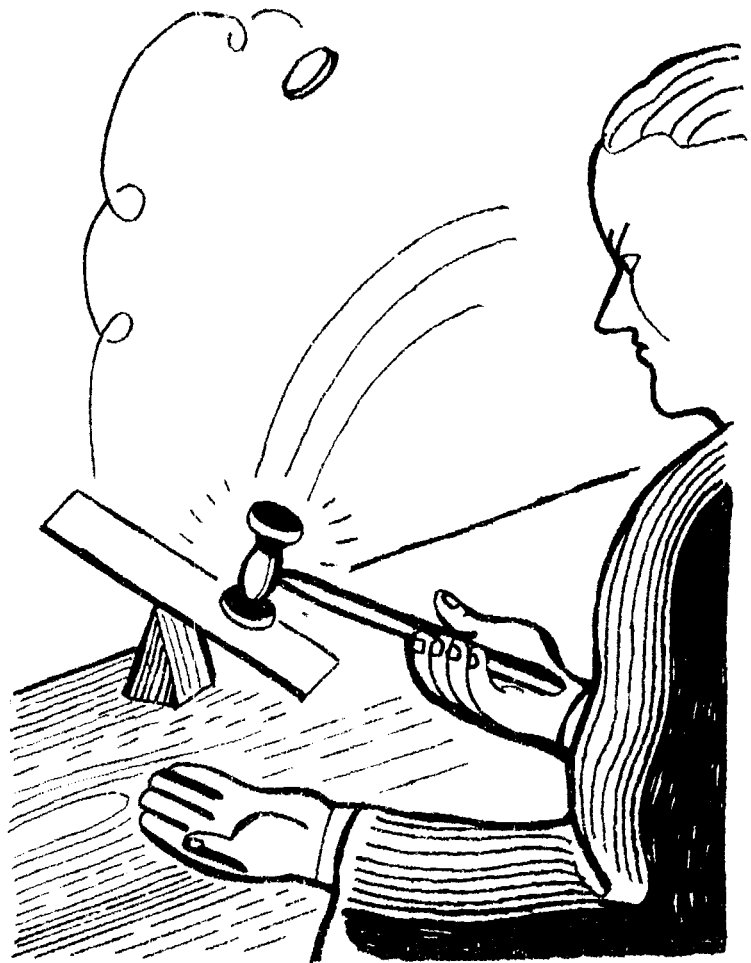
If the state canvassing board then defies the Florida Supreme Court and refuses to certify Gore's electors, we might face the same dilemma that Florida faced in the nineteenth century. If the dispute between the state courts and the state executive isn't resolved by the federal deadline of December 12, it's conceivable that two slates of electors—one for Bush, certified by the state canvassing board, and one for Gore, representing the uncertified result of a manual recount in a few counties—could go to the House and Senate. The analogy to 1876 would then be complete. The question

would then be, once again, whether Congress has the power to look beyond the official certification from Florida and determine the actual winner in the disputed counties.

Imagine the following scene: On January 6, the Senate and the House meet in joint session to count the ballots received from the electoral college. Gore, as president of the Senate, is responsible for reading the electoral college results in alphabetical order and tries to count the uncertified Gore votes rather than the certified Bush votes. The House and Senate would then meet separately to decide which of the two slates of electors to accept. Imagine that both houses divide strictly along party lines: The Republican House votes to accept the Bush slate, and the Senate, split 50-50 because of the votes of Joe Lieberman and Maria Cantwell, is deadlocked. Gore casts the tie-breaking vote for himself.

What happens next? According to the Electoral Count Act, passed and amended in the wake of the Tilden debacle, if the two Houses disagree, “the votes of the electors whose appointment shall have been certified by the executive of the State ... shall be counted.” So if the House sides with Bush and the Senate with Gore, the election will be decided by ... Florida's Republican Secretary of State, Katherine Harris.

This may seem unfair. But these are the rules. The U.S. Supreme Court has no power to change them and should not be asked to do so. An electoral crisis produces a partisan result—no matter which partisan body makes the final decision. Federal judges couldn't save us from this predicament in 1876, and they can't save us today. ■



Stanley Kauffmann on Films Dark Surprises

WITH AN APTNESS that no one could have wanted, here are two films about Israeli troubles. Both deal with events of the early 1970s.

One Day in September (Sony Pictures Classics), a documentary about the Palestinian attack on the Israeli Olympic team in Munich in 1972, was made by a British director, Kevin Macdonald. The purposes evidently were to remind us, in this age of ever-shrinking memory, of what happened and to provide information about it that is not widely known. Not only does the film fulfill both purposes, it does something more.

At the start we see a tourist video of 1972 inviting us to happy Munich for the Olympics. Then we see home movies of the wedding of one of the subsequently murdered Israeli athletes, together with present-day glimpses of his wife and grown daughter. These materials, along with later visits to the cemetery where several of the victims are buried, were probably unavoidable but are just a touch facile.

The person with whom the film really starts is Jamal Al Gashey, the only surviving member of the terrorist group, who now is in hiding somewhere in Africa with his wife and children and who is seen only in shadow. Al Gashey—he speaks recurrently throughout the film—begins with the training that he and his mates underwent, then describes where they met in Munich and how they proceeded.

Presumably he agreed to participate in this film because he is still proud of what he and his friends did, helping, he says, to bring Palestinian troubles to the world's attention. Other interviewees, German officials, Israeli officials, relatives of the murdered Israeli athletes, all contribute vivid accounts, many of them chilling. (Some of the connective narration was done by Michael Douglas.)

The whole operation is put before us, including aspects that are now dimmed or were never highlighted. First, we see that the point of taking the Israeli hostages was not sensibly determined in advance by the attackers. Their initial demand was that 236 political prisoners

in Germany and Israel be released within a few hours, else the Palestinians would execute the hostages. Even if the Germans and Israelis had instantly agreed to the demands, which they never considered, it would have taken time long past the deadline to carry out the orders. When the terrorists saw that this plan could not work, they demanded a jet to take them and the surviving hostages (two were already dead) to an unspecified Arab country. The difficulties of getting this group to the airport and safely away were so poorly understood that this was obviously a hurriedly concocted alternative plan. (And how would the terrorists have escaped from Germany even if their original demands had been met?)

Second, the actions of the Olympic committee are stupefying. After the terrorists were in the Olympic quarters and the killings had commenced, the games continued. Macdonald includes some shots of the racing athletes and the cheering crowds, all of whom knew about the invasion, the threats, and the killings. (I thought of a full-page photo in *Life* decades ago that showed an American cocktail waitress with a drink on a tray stepping daintily over the body of a murdered man lying on the floor of the bar.) The games were stopped late that afternoon, but they resumed next day—with all the flags at half-mast. Talk about macabre comedy.

The most astonishing facts, possibly not foreseen by Macdonald as the indictment they become, are about the Germans. Obviously they wanted to do well as Olympic hosts, for something more than six million reasons. But the film discloses peculiar behavior by both East and West Germany.

We are told that, a few days before the attack, East German Olympic officials had explained the layout of the Olympic city to the Palestinians. This matter is simply stated and left: we don't learn why or how.

The West German police response was muddled. Israel's swift offer to send what we would call a SWAT team was declined. This can be understood in terms of sovereignty, but the German police had no such team of their own.

Some policemen were ordered to slide down the ventilation shafts of the Israeli quarters and surprise the terrorists, but this move was abandoned when officials realized that TV crews on the roof opposite were filming the whole thing and that there were TV sets in the occupied rooms.

When the Palestinians and their prisoners boarded the bus to take them to helicopters that would fly them to the airport, the police discovered that there were eight Palestinians, not five, as they had previously thought; but they didn't convey this fact to the police and other officials at the airport who were setting up an ambush.

Policemen disguised as flight crew were on the jet that was supposedly to carry off captors and captives, but at the last moment these policemen decided they were under-trained and under-equipped and voted to abandon their mission. (I cannot remember such a vote and such an action on the part of police anywhere else at any time.)

Five police snipers were stationed around the airfield, but most of the other police didn't know they were there, and in the subsequent crossfire the police killed at least one of their own snipers. The authorities requested armored cars at the airport, but the police had allowed the roads to the airport to become so clogged with avid sightseers that it took an hour for the cars to arrive.

When the police began firing at the airport, the Palestinians threw a grenade into one of the two helicopters and machine-gunned the hostages in the other. All of the Israelis died. Three of the Palestinians survived and were captured. Later on, when they were about to stand trial, a Lufthansa plane was hijacked by Palestinians who demanded that the three prisoners be released. German authorities agreed. The film shows us German authorities virtually admitting that the hijacking was a setup, arranged so that the Germans could get rid of the prisoners, and would not have to try them and run the risk of reprisals at home and at embassies abroad. (In time two of the Palestinians were liquidated by Israeli assassination squads. Al Gashey lives in hiding.)

Thus, though this may not have been the filmmakers' original intent, *One Day in September* not only recreates the horror, it raises questions about—let's be charitable and omit German ethics—German efficiency.

On the other hand, **Kippur** (Kino International) raises questions about Israeli efficiency. Amos Gitai, the skilled Israeli filmmaker who last year presented

Books.

[AT BARNES & NOBLE]

Reading Between the Lines

DARKNESS IN EL DORADO

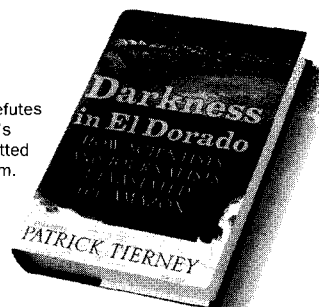
by Patrick Tierney

In an explosive exposé based on a decade of painstaking research, Patrick Tierney refutes accepted anthropological and scientific theories on the warlike nature of the Amazon's Yanomami Indians. This influential work explores the hypocrisy and outrages—committed in the name of research—that further the base history of Western cultural imperialism. (Norton)

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FAILED CRUSADE

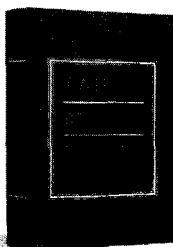
by Stephen F. Cohen

The dissolution of the Soviet Union has left seventy percent of its population living in poverty and has created dangerous social, economic and political instability in its wake. A preeminent Russian scholar and journalist indicts U.S. policymakers for contributing to the destabilization and calls for a revised policy toward post-Yeltsin Moscow that may prevent nuclear catastrophe. (Norton)

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THE TWILIGHT OF AMERICAN CULTURE

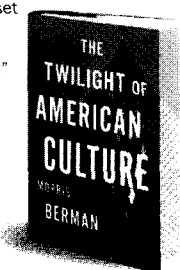
by Morris Berman

With corrupt politics, increased violence and the demise of educational systems, America is rapidly disintegrating into a state of chaos. In this fascinating volume, cultural historian and critic Morris Berman examines the onset of corporate mass culture and, to the contrary, the "new monastic individuals" who refuse to base their lives on consumerism. (Norton)

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DR. SEUSS GOES TO WAR

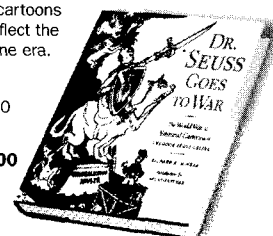
by Richard H. Minear

Many generations have treasured Dr. Seuss's uniquely illustrated and singularly silly tales, but few are aware of his work as a World War II political cartoonist for the New York daily newspaper, *PM*. Capturing the viewpoint of the New Deal liberals, over two hundred provocative, witty cartoons and caricatures reflect the zeitgeist of a bygone era. (The New Press)

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RICH MEDIA, POOR DEMOCRACY

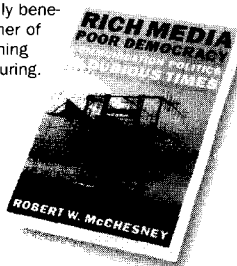
by Robert W. McChesney

Challenging the assumption that the Information Age brings choice to our democratic society, one of today's most respected media critics reveals how the current climate primarily benefits wealthy individuals and corporations. Winner of Harvard's Goldsmith Book Prize, this eye-opening account is a wake-up call for political restructuring. (The New Press)

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LOCAL HEROES CHANGING AMERICA

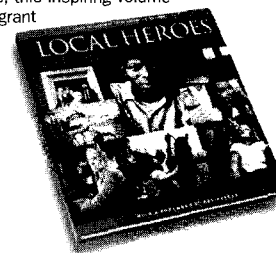
by Tom Rankin & Trudy Wilner Stack

Against the odds, ordinary Americans are contributing extraordinary energy to improving their communities and their lives. Through photographs and first-person narratives, this inspiring volume encounters volunteer crime patrols, migrant workers, marine conservationists, and other dedicated individuals. Includes a CD narrated by the women and men featured in the book. (Norton)

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Kadosh, about strife between Orthodox and other Jews in Jerusalem today, here revisits the Yom Kippur War in October 1973 (just slightly more than a year after the Munich massacre).

In that war, Gitai was a member of a helicopter squad in the Golan Heights that was sent to rescue pilots who had been shot down. Fictionally, with an actor representing him, he depicts the call to arms on Yom Kippur and his quick response with a friend. At least they wanted it to be quick. The confusion on the road, as they drive, the further confusion in the various places to which they report, verge on stock service comedy. At last he and his friend are assigned to this helicopter work, and they plunge into the midst of danger and pain—graphically rendered in Gitai's film. But again there doesn't seem to be much government planning or direction. Yes, Israel won the Yom Kippur

War, which began with a surprise attack on several borders and was over in less than a month, but Gitai's experience is a sidelight on what is generally thought of as a perfect military machine.

A grim point. The film was made in the Golan Heights where such events had actually happened and have since only fitfully stopped happening. How, I kept wondering, did it feel to be doing make-believe war there?

And an oddity. At the start, just before the sudden attack, the Gitai character and his girlfriend are writhing nude on a bed, their bodies covered with sloshes of various colors, "body painting" a work of art in a way that was avant-garde at the time. At the end, the Gitai person is back doing the same thing again with his girlfriend. Is Gitai telling us that the war was fought to protect the right of private idiosyncrasy? ■

duction. Chekhov wrote a great many stories—there are thirteen volumes in the Ecco Press edition—and others might have been chosen by Pevear and Volokhonsky. But here is their fine book, a useful and challenging revelation to meet a wanderer in a bookstore.

"Sleepy": a bedtime story. It is night, the baby is howling without pause, and Varka, a thirteen year old girl, her eyes drooping, is rocking the cradle. The mother comes to nurse the baby, and hands it back to the nodding girl, saying: "Sleeping, you slut!" Next door the master and his apprentice are snoring. Outside the big house, Varka's family, peasants on the place, are also howling, because the father is dying, and the night passes with the sleepless Varka called to bring the firewood, to set up the samovar, to clean the master's galoshes, to wash the steps, to peel potatoes. "Her head droops on the table . . . the knife keeps falling from her hand." Guests arrive and it is: Varka, fetch the vodka, Varka, clean the herring. The guests leave, the lights are put out, and the last call is: "Varka, rock the baby." Varka, in her daze, ponders the problem of her life and decides that "the enemy is the baby." She strangles the baby in his crib and "quickly lies down on the floor, laughing with joy that she can sleep, and a moment later is already fast asleep, like the dead. . . ."

This tender, terrible story is all of five pages long. The baby, Varka, the master, the mistress, the guests, Varka's dying father, two days and nights passing. That is all. Chekhov does not offer a moral; his summation is to be found in the words "like the dead." Like the dead baby, or like the death that will come to Varka?

The Disabused

By ELIZABETH HARDWICK

Stories

by Anton Chekhov

translated by Richard Pevear
and Larissa Volokhonsky

(Bantam Books, 454 pp., \$11.95)

ANTON CHEKHOV WAS born in 1860, just a year before the emancipation of the serfs in Russia. Many of the peasants in his stories are still laboring for the old masters on the old acres and others are land-workers, hiring out for the day. The country is a vast landmass with nine months of winter which in some of Chekhov's fictions were thought to account for the sloth and the passivity of the fortunate classes, and for the god-forsaken numbness of the hordes of the poor.

So often in Chekhov's stories there is an opening on a magnificent day; vast clear skies, the smell of new-mown hay, "languid, transparent woods." And in an ending on the water—in the story "Gusev," for example—after a sick man has been sewn in canvas and thrown to the sharks: "A broad green shaft comes from behind

the clouds and stretches to the very middle of the sky. . . . The sky turns a soft lilac. Seeing this magnificent, enchanting sky, the ocean frowns at first, but soon itself takes on such tender, joyful, passionate colors as human tongue can hardly name."

The snow falls like a shroud; the holes in the road could almost swallow an old horse; there is mud everywhere; and inside screaming for the serving girl to light the stove so that the mistress can arise. Chekhov is only in passing a landscape painter, but the reader notes that the landscape is always there, in a few sentences, a paragraph, perhaps serving as authorial craft, or as a memory, a vision set apart from the human dramas to make a suffering life more bearable: the warm May wind before a real storm gathers.

The storm in the human heart, if such a phrase is acceptable, is what the magical stories by Chekhov seem to know with an almost ghostly intimacy. Thirty of his stories are presented in a brisk new translation by Richard Pevear and Larissa Volokhonsky with an interesting intro-

CHEKHOV'S GRANDFATHER WAS a serf who bought his freedom before the emancipation; his father was a tradesman who did not prosper. The family in which he grew up was a close family, which no doubt created an atmosphere of kindness that caused the writer to notice the absence of humility and understanding in so many of the embattled families portrayed in his fictions. Chekhov received a good education, and also a deep experience of the Orthodox church, which illuminates the stories even though the writer lost his faith.

"Easter Night": a strange setting for the words of the ferryman, a novice in a religious order who is mourning the death of an old monk who wrote beautiful, original canticles in honor of Christ, the Virgin Mother, and the saints. The ferryman remembers the words: "Tree of bright fruit, tree of good-shading leaves . . . Besides smoothness and eloquence, sir, it is necessary that every little line be adorned in all ways, to have flowers in it,

ELIZABETH HARDWICK is the author most recently of *Herman Melville* (Viking).

and lightning, and wind, and sun, all the things of the visible world." Even though it is Easter, the faithful novice-ferryman is not relieved of his duties on the boat. The narrator grieves for him: "There would be no happier man in the whole church. But now he is going back and forth across the dark river and pining for his dead brother and friend."

"The Bishop": Death, which concludes so many of Chekhov's tales, often with great suddenness, will bring a moment of transformation. The Bishop is ill. He will die before Easter. The story begins: "On the eve of Palm Sunday the vigil was going on in the old Petrovsky Convent." Although he is in great distress, the Bishop will perform his duties: "The first Gospel, the longest, the most beautiful, he read himself." He is a modest man who regretted the fear that his exalted position aroused even in his old mother. On his deathbed, "he imagined he was now a simple, ordinary man, and he was free as a bird and could go wherever he liked."

Chekhov's family left their village and moved to Moscow, where he joined them to enter medical school. Along the way, he began to write stories, and when they brought him critical recognition he devoted his short life to writing fiction and the exquisite plays. Medical school, hospitals, disease, doctors' visits in the stories—all of this inflamed his imagination as he sat at his desk creating the swarm of Russian life at the end of the nineteenth century.

"Ward No. 6": a complex, celebrated story that takes place in a provincial hospital. One wing is set aside for the mad; and although it is seldom visited by the staff, the doctor in the story becomes fascinated by an inmate who is suffering from persecution mania. The development of the affliction is described with sharp, glancing detail. The appearance of a policeman in the street makes the poor man believe he is to be accused of a crime and so "he smiled and began to whistle in order to appear indifferent." He feared that a bribe would be put into his pocket to frame him for malfeasance. "His thoughts had never been so supple and

inventive as now." The plot of the story is that the doctor becomes so enthralled by the madman that he "began visiting the annex every day.... He went in the morning and after dinner, and often in the evening darkness...." The staff could not understand "why he sat there for hours at a time, what he talked about, why he did not make any prescriptions." The ending of the story is that the doctor is himself locked up in Ward No. 6.

The hospital itself is a hive of cockroaches, bedbugs, and mice; there are only two scalpels and not a single thermome-

universe, knocking an inferior about as was automatic as bowing to a superior on the street. (Turgenev's mother, a rich landowner, was an infamous brute, strong as an athlete, given to marathon thrashings until she fainted.) Shopkeepers, factory managers, petty officials, and their insolent women back home beat a peasant child for taking a cookie, and a housemaid for slowness; husbands beat their wives for impudence, for complaining, and for just being there when they come home drunk, which is how they come home in this landscape where a flood of alcohol

marks the evening as cups of tea mark the day.

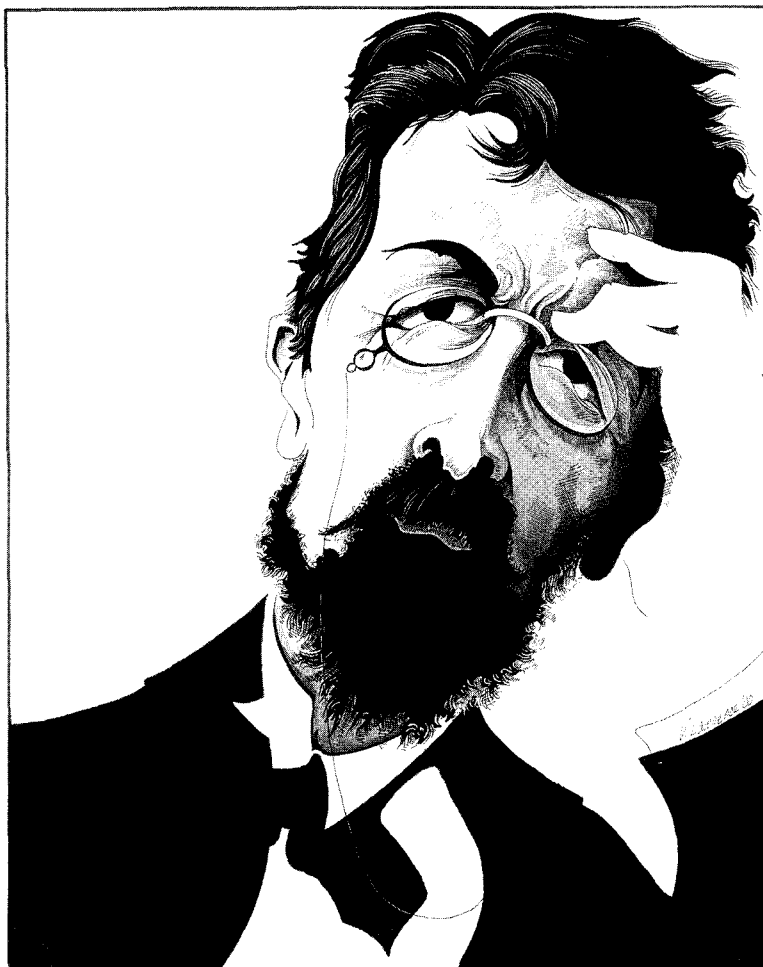
"The Huntsman": He is a strong, handsome man of the people whose skill has led the local squire to take him into his house as a cherished companion on the hunt. One day the huntsman is alone in the field and hears a plaintive voice calling for him. It is his wife, a poor landworker, begging him to come home. The huntsman feels free and happy, spoiled and footloose. He is known as the best shot in the whole district, and he is enjoying his reputation. His marriage was a drunken joke. But the forlorn wife, making a sort of claim, pleads with him: "You stopped by our cottage for a drink of water on Easter day ... You swore at me, beat me, and left ... If only you'd come one little time."

"Vanka": The nine year old boy is writing to his grandfather on Christmas Eve. "Have pity on me, a wretched orphan, because everyone beats me ... And the other day

the master hit me on the head with a last, so that I fell down and barely recovered ... I remain your grandson, Ivan Zhukov, dear grandpa, come."

There is much weeping in Chekhov's stories: eyes brimming with tears; weeping for sadness when the son leaves, weeping for joy when he returns. Weeping for the beauty of the moon beyond the window. As in "The Bishop": "Tears glistened on his face, his beard. Then someone else began to weep near him, then someone else further away, then another and another, and the church was gradually filled with quiet weeping."

The poor in the stories have an innocent



Anton Chekhov by Vint Lawrence for The New Republic

ter; potatoes are stored in the bath. To complain, or to suggest that the place be torn down, would not go over well with the town officials. "Everyday filth and muck are necessary because in time they turn into something useful as dung turns into black earth." Edmund Wilson tells us that the young Lenin, already a revolutionist but for a time trapped in his native village, wrote in a letter to his sister that "I absolutely had the feeling that I was shut up in Ward 6 myself."

"Beating": The doleful word "beating" appears in many of Chekhov's stories. A large population that had to work or starve excited this privilege: in Chekhov's

ignorance as they try to make their head-scratching way through the convoluted, abrupt commands of officials, documents, bureaucratic encounters, or common-sense. In "The Malefactor," a peasant in a "calico shirt and patched trousers" is brought before the magistrate because he has been taking nuts from the railway ties to use as sinkers for his fishing rod. The official inquires about the nuts that they found in searching the peasant's place, and the confused man replies: "You mean the one that was under the little red trunk?" Explanations that the nut ties the rail to the track are answered by: "We don't unscrew all of them.... We leave some." When he is told he must go to prison, the poor man says: "Your Honor! I haven't got time. I have to go to the fair, and also get three roubles from Yegor for the lard...."

CHEKHOV PRODUCED SOME extremely brief stories, and they have an uncanny feeling of evanescence, as if caught in the air one day, born from a "hat with a feather in it" or "a yard with no grass," "a black silk dress with fashionable sleeves." At evening parties the unhappy land arouses moments of conversational idealism, before the guests leave to find a homeless wanderer who will be crying, "God bless you! Give alms!" What is to be done? Guilt and despair and then to bed. Beautiful young women carry baskets to the hungry or set up a school in the village; ideas float in the cigar smoke. "Blue blood, my dear fellow, has an historical justification, and to refuse to recognize it is, to my thinking, as strange as to refuse to recognize the antlers on a stag."

In a long story called "My Life" (which is not included in Pevear and Volokhonsky's volume) a young man has decided he will not work in a government office. Instead he will seek manual labor and the honor of it, even if this will mean disgrace to his family; especially to his boorish, violent father of minor noble ancestry. The young man gets a job painting houses, tiling the roofs. "I was living now among people to whom labor was obligatory ... and who worked like cart-horses, often with no idea of the moral significance of labor, and, indeed, never using the word 'labor' in conversation at all" (Constance Garnett translation).

Status, posturing, bad faith, and the insecurity of position: all corrupt the newly risen. The workmen steal, and scorn the idealistic son of the boorish father. Many layers of society wander about in this elaborate tale. Later, when he is married to a well-born girl, who is herself troubled by the inequity and the falseness of complacent surroundings, they go to work on her farm in the countryside, to build a

school for the peasants, who "steal the new wheels off our carts ... stole by night boards, bricks, tiles, pieces of iron." The mortified hopes of the young wife seize her in a fury: "Is it possible these reptiles will go on living another year and a half in our yard? It's awful! Awful!"

The wife takes off for America, leaving the young man, now older, to mourn the loss of her presence. He is confused, saddened by what his preference for the dignity of labor has brought him. And yet he remains drawn to the peasants: "However uncouth a wild animal the peasant following a plough seemed, and however he might stupefy himself with vodka, still ... one felt there was in him what was needed, something very important."

EVANESCENT; CAUGHT IN the dusty air, the masterful brevity of a sigh; the shape of this great writer's art was often described by his contemporaries as impressionistic. But put the tale aside, pause under the lamplight, and the memory is suddenly of a mysterious weight, an amplitude, a dazzling clarity—a memory of a dramatic emotional and spiritual magnitude. Even Chekhov's most humble figure, trapped in blinding repetition, is not a type, but a singular being, as self-defined as the fated tics and caprices of a czar.

In this world of vagrant legitimacy, the rich overspend, and waste, and borrow; and their acres, their days of pleasant lunches and naps, pass into the dirty hands of a plebeian, ill-mannered, shrewdly fawning man making his way into a life of flunkies, overdressed daughters, and servants always lazy and thieving. The licentious man-about-town says ta-ta to the pretty flirt and she makes her way back to her village to moan throughout the day and to eat turnips in the kitchen of her indigent folks, from whom she had fled by way of blue eyes, blonde curls and a neat, dancing foot.

The observation of Russian life found the liar, the grossly presumptuous, and the infidel cruel; but it was the winged span of Chekhov's imagination that created the ever astonishing humanity of his pages. Violence, greed and carelessness are not forgiven; instead you often feel that the unholy are, unknown to themselves, battling against a dark, threatening emptiness. The benighted and the numb have seizures of dreaminess, flights of fancy in which they rush to greet a flimsy thread of hope. In "The Wife," an unappetizing couple mistakenly believe for a few hours that the wife has won the lottery. The husband dreams of travel, of buying an estate, "eating an ice in the leafy summer heat" ... bathing in the water where "little fish flit to and fro and green water-weeds nod

their head." And then he remembers that his wife is ugly, stingy, and complaining, that the only thing they share is a snuffling hatred of each other.

THE DISABUSED CHEKHOV, without illusion about the triumph of virtue or personal ennoblement by dinner-table idealism, did in his active life what he could on behalf of honesty and justice. He helped in the cholera and famine epidemics of 1891 and 1892; he made a punishing trip to the penal colony on Sakhalin Island and wrote an important book exposing the degrading conditions. By remaining faithful to the misery of life as he saw it, Chekhov was (one wants to say) a happy man. In Moscow he was known and his literary genius was acknowledged, if in the fitful manner so often experienced by a living artist. In the introduction to the present selection of his stories, Pevear writes that he was "less faithful to the women who fell in love with him—and many did." "There was Lika Mizinova, with whom he was 'nearly' in love, but then failed to keep a rendezvous while traveling abroad in 1894." Five years before his death he married Olga Knipper, an actress in the Moscow Art Theater. He was only forty-four years old when he died in Germany of tuberculosis.

Chekhov was the last in the nineteenth-century explosion of prose genius in backward Russia, with its illiterate masses, its small educated class, its lack of a major European language (which was shown by the upper-class habit of decorating conversation with bits of French). That a literature of such abundance should have come from Russia was beyond prediction. In this respect, it rather resembled the Marxist revolution of 1917, which was designed for Germany, not for the steppe and the tundra.

For the English reader, this literature came by way of the sacrificial labor of the noble Constance Garnett. Perhaps there should be a statue erected to her in London—maybe in the monumental Soviet style, since she was indeed a Stakhanovite. In his beautiful book on Gogol, Nabokov raged against her translation of *Dead Souls*. We are bound to honor the spasms of pain that this madly gifted linguist and lexicographer endured while flipping through a transcription of Gogol's word-drunk masterpiece; but it is otherwise for us, and a banning of Constance Garnett would be like a declaration of war against Schlegel and Tieck's *Hamlet* in a German *gymnasium*.

Richard Pevear and Larissa Volokhonsky are scholars of Russian language and literature, and one hopes that it is not too finicky, in ignorance of the original

language, to make a scattered comparison of their translation and the version by Constance Garnett. There are insignificant changes of titles: "Easter Eve" here and "Easter Night" there. At times the current workers prefer "snacks" to C.G.'s "sweetmeats"; but more troubling is an occasional bit of hip street talk: "Have a drink, a bite to eat, then hit the sack." In Garnett it is: "To drink and to have a bit of supper and tumble off to sleep."

Chekhov's language is more or less plain, and also wild and unexpected in simple descriptions: "On his head a whole mop of long-uncombed matted hair, which endowed him with a still greater spider-like sternness." That is Pevear and Volokhonsky, in "The Malefactor." Here is Garnett: "On his head there is a perfect mop of tangled, unkempt hair, which gives him an even more spider-like air of moroseness." Was there a need for a re-translation? Perhaps not; but shall we say that no harm has been done.

ONE PUZZLE OF a tale entitled "The Fidget" in the new translation does not appear in the Garnett list. Searching her texts, we find it under the title "The Grasshopper." The interesting thing is that the heroine of this important story is not spoken of as a "fidget" nor compared to a "grasshopper." Perhaps Chekhov's word is untranslatable as a description of Olga Ivanova, the restless, pretty young woman whose life is love of the local celebrities in painting, the theater, and the concert hall. She herself tries everything: "She sang, played the piano, painted, sculpted, took part in amateur theatricals." She marries a serious, hard-working doctor because he spent whole days and nights at her dying father's bedside. To her friends the doctor seems negligible, unimportant, and carelessly dressed; he has "a salesman's beard." "However, if he had been a writer or an artist, they would have said his little beard made him look Émile Zola."

Dymov, the doctor, is one of Chekhov's most heartbreaking portraits. "Every day from nine o'clock till noon he received patients and was busy with his ward, and in the afternoon he took a horse-train to the other hospital where he dissected dead patients." The doctor loves his pretty, vivacious wife, and she is fond of him; but she does not understand his profound dedication to the sick and to science, and the dangers of it. He caught erysipelas in the hospital and had to shave his head. Olga put a scarf around the shorn head and began painting him as a Bedouin.

Olga is unfaithful with a painter, and poor Dymov suspects her infidelity and would forgive her, if only she could share his delight that he had finished his thesis

and could be offered a post as assistant professor of pathology. "Olga did not understand what an assistant professor of general pathology was, and besides she was afraid to be late to the theater." Dymov is taken seriously ill with diphtheria. "On Tuesday he sucked diphtherial membrane from a sick boy's throat with a tube." His friend, a doctor, sits through the night as Dymov is dying, and in the end denounces Olga for her escapades, her theatrics, her love of clothes, her ignorance of the great man who loved her.

He's dying because he sacrificed himself.... What a loss for science!... Compared to us all, he was a great, extra-

ordinary man! So gifted! What hopes we all had in him!... And what moral strength!... A kind, pure, loving soul, not a man, but crystal! He served science and died from science. And he worked like an ox, day and night, nobody spared him....

The last lines of this pure cry of anguish for a good, modest, valuable man are:

Go to the church caretaker and find out where the almshouse women live. They'll wash the body and prepare it—they'll do everything necessary.

The passion and the indignation—Chekhov's. ■

The Illiberal Imagination

By RICHARD WOLIN

Within Four Walls:

The Correspondence Between Hannah Arendt and Heinrich Blücher, 1936–1968

edited and with an introduction

by Lotte Kohler

translated by Peter Constantine

(Harcourt, 512 pp., \$35)

I.

IN THE HUMAN CONDITION, her philosophical *chef d'oeuvre*, Hannah Arendt went to considerable lengths to elucidate the difference between the "public" and "private" spheres of life. Writing during the late 1950s, she considered the erosion of this fundamental distinction to be a symptom of American cultural decline. The public sphere, she claimed, is the realm of human "plurality," the dimension in which men and women congregate in order to share values and convictions that they possess in common. And the ultimate violation of "publicness" occurs when this ideal multiplicity of standpoints is reduced to a single perspective or point of view—a fate that befell the ancient world under tyranny and modern society under totali-

tarianism. Although the repercussions of totalitarian dictatorship were undoubtedly more severe, for Arendt "tyranny" represented a textbook instance of the baneful inversion of public and private: the tyrant perverts the essence of the *res publica* by exploiting it as a vehicle for his own personal enrichment.

The modern West, its recent triumph over Nazism notwithstanding, remained afflicted by the tyranny of the private—in the form of "society" as the sphere of unrestrained "interests"—over the public realm; or so Arendt argued. The most notable expression of this development was the triumph of *homo economicus* as a representative type, as the accumulation of wealth became the highest virtue in modern societies. Self-enrichment, which the Greeks regarded as a means to an end, was unjustifiably elevated to that status of an end in itself, or the *summum bonum*. Correspondingly, the state forfeited its role as the guardian and the repository of the values of "publicness."

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Instead, the political commonwealth degenerated, in Arendt's account, into the liberal "night-watchman state," ensuring that the infrastructural conditions for successful accumulation were met (maintaining a standing army, law courts, and police, collecting taxes, and so forth).

In Arendt's view, "mass society," by virtue of its obsession with mindless diversions and cheap amusements, represented the final chapter in the fateful triumph of the private over the public, the "social" over the "political." As she remarked in "The Crisis of Culture":

Mass culture comes into being when mass society seizes upon cultural objects, and its danger is that the life process of society (which like all biological processes insatiably draws everything available into the cycle of its metabolism) will literally consume the cultural objects, eat them up and destroy them... [A] consumers' society cannot possibly know how to take care of a world and the things which belong exclusively to the space of worldly appearances, because its central attitude toward all objects, the attitude of consumption, spells ruin to everything it touches.

The Greeks may have gone too far by associating the private sphere with "idiocy" (*idion*, or "one's own"); but mass culture, with its lurid voyeurism and its interminably confessional mode, has sunk to new depths. Time and again, the space for meaningful public discourse has been usurped by base entertainments and exhibitionist displays of "intimacy," whose interpersonal fragility is ill-suited to bear the harsh light of publicity.

Arendt was certainly not the first to identify and to criticize these developments: the 1950s were awash in denunciations of the "culture industry," "lowbrow," "masscult," and "midcult." Nor do her analyses remain untarnished by her own patrician biases. In one typical passage, in which she contrasts ancient and modern notions of privacy, she leaves the following claim unglossed, thereby implying her own agreement: "A man who lived only a private life, who like a slave was not permitted to enter the public realm, or like the barbarian had chosen not to establish such a realm, *was not fully human*." Still, there can be little doubt that she helped to chronicle a social and cultural transformation of momentous proportions.

Arendt was the consummate embodi-

ment of what we now refer to as "the public intellectual," putting her philosophical training to good—if often controversial—use by commenting on the major political themes of her day: totalitarianism, Zionism, desegregation, the Eichmann trial, the Pentagon Papers, and so forth. It is no small irony that, given her passionate scruples about maintaining the traditional boundaries between the public and the private, the publication of her voluminous correspondence exposes her zealously guarded private side in such explicit detail. So far five volumes of Arendt's letters have appeared: her correspondence with Martin Heidegger, the Zionist leader Kurt Blumenfeld, Mary McCarthy, Karl Jaspers, and Heinrich Blücher, her husband of thirty years. (The Heidegger and Blumenfeld volumes have not yet appeared in English.)



Hannah Arendt and Heinrich Blücher in New York, c. 1950

With the publication of all these letters, there is always the risk that Arendt herself foresaw: that in this publicity-crazed age, our own biographical titillation might eclipse a writer's achievements. The danger first surfaced five years ago, when Elzbieta Ettinger published a voyeuristic account of the Arendt-Heidegger correspondence, to which Ettinger had inexplicably gained privileged access. Some two decades after her death, and with the taint of the *Eichmann in Jerusalem* controversy long faded from view, Arendt's posthumous luster was unparalleled. She was, after all, an unmatched critic of totalitarianism, the major political quandary of our age; and she rivaled her countryman and fellow émigré Leo Strauss as perhaps the greatest political thinker of her time. And here was Ettinger with a book on two great minds that somehow managed to elide intellectual matters entirely. Ettinger treated Arendt as "human all too human," at least as far as her relationship

to Heidegger was concerned.

As is now well known, the two had had a passionate affair that began when Arendt was an eighteen-year-old university student and Heidegger a professor nearly twice her age. Quoting from their correspondence at length, Ettinger implied that Arendt, the proud intellectual warrior in New York, acted with girlish immaturity when it came to the magus of Freiburg. (Arendt later told Mary McCarthy that her dalliance with Heidegger was "the great love affair of [her] life.") Heidegger had become an avid Nazi in 1933, and as late as the 1950s continued to write effusively about the "inner truth and greatness of National Socialism"; but for Arendt, following a reunion in 1950 that she would describe as "the confirmation of an entire life," all seemed forgiven. She busied herself by supervising translations of Heidegger's books, and wished to dedicate *The Human Condition* to him (in the end she thought better of it), and defended his reputation against all comers.

When Ettinger's book appeared, a coterie of loyal supporters quickly sprang to Arendt's defense. Given her strictures about blurring the boundaries between private and public, one can sympathize with their rage. But there was one count on which Arendt's backers seriously erred: their willingness to look the other way when it came to Arendt's efforts to whitewash Heidegger's Nazism. (And in the very period in which she was finding extenuations—"the banality of evil"—for Eichmann!) For clearly at issue were matters of considerable *public* importance, on which Arendt herself had taken a highly contestable stand. In an essay in 1969, citing Plato's ill-fated experience with the tyrant Dionysius as a precedent, Arendt claimed that philosophers lead an other-worldly existence; and consequently (following the terms of Plato's famous cave allegory), that should they descend from the pure ether of "Being-in-itself" to dwell among mere mortals, they were destined to err. In this way Arendt, the great critic of totalitarianism, excused Heidegger's Nazism as merely a *déformation professionnelle*.

What was it that induced certain philosophers to succumb to the lures of political dictatorship, whereas others were able to resist? Arendt never provided an answer to this excellent question. When, in the same essay, she made the preposterous claim that "the inclination toward the tyrannical can be proven in the case of

almost all great philosophers," she merely confused matters. In this way she implicitly accepted Heidegger's own retrospective self-justification, which, in the tradition of German romanticism, arrogantly invoked the prerogatives of "genius" for the thinker: "To think greatly is to err greatly."

But it would be a mistake to understand Arendt's vindication of Heidegger as entirely a biographical matter, an affair of the heart. There are also significant intellectual stakes here. Arendt was not only Heidegger's lover, she was also Heidegger's student—his diligent and grateful student; and her thinking shows it. This darling of American liberals was, as a thinker, a very bad liberal. Indeed, she was no liberal at all, but a very good Heideggerian. And the terms of her vindication of her teacher cast much light upon her own formation amid the culture of Germany's academic mandarins in the 1920s—an experience that would have a profound impact on her own understanding of twentieth-century politics and the "life of the mind."

WITHIN FOUR WALLS falls into a different category than the previously published volumes of Arendt's correspondence, since it touches on personal matters in a way that the other volumes do not. Its appearance is likely to engender new controversies. For a start, out of the four hundred letters exchanged between Arendt and Blücher over a period of thirty-four years, only three hundred have been selected for this volume. Moreover, the letters in this book appear to have been significantly edited—so as not to defame the living, we are told. (As for the dead, all bets are off.)

One cannot help but wonder why so many of the letters that the couple exchanged remain unpublished; and more, why many of the letters that have been selected are substantively abridged. A partial answer to this perplexity emerges from Lotte Kohler's introduction. Toward the end of her remarks, one encounters this stunning and gratuitous avowal:

Blücher was by no means the epitome of the unseducible husband. He was quite susceptible to the feminine charms of the women in their close circle of friends. His wife knew this, or at least surmised it, and had been hurt by it and given it much thought. A lengthy reflection she wrote in 1950 on "fidelity" in her unpublished "Thought Diaries" is moving testament to this. There she differentiates between the "more or less innocent infidelity," which "is mapped out through the course of life and in the energy of being alive," and "the great crime of infidelity," which "murders that which was true ... that which one

brought into the world." She writes that infidelity alone "is true destruction, because it is only through fidelity that we are masters of our past ... If fidelity were not to exist, then truth would be without substance, completely meaningless" ... True infidelity is "forgetting," which is ultimately "the only real sin, because it smothers truth, and that which was true."

When combined with more recent revelations concerning the couple's various marital difficulties—they were detailed by Bernd Neumann in his study *Hannah Arendt/Heinrich Blücher*, which was published in Germany in 1998—Arendt's tortured philosophical ruminations on the problem of fidelity, as reproduced by Kohler, raise a number of troubling scholarly and editorial questions. They strongly suggest that her editors and biographers have heretofore presented a deceptively harmonious image of the couple's matrimonial life for the sake of suppressing potentially controversial episodes, such as Blücher's extra-marital dalliances, from the official biographical record.

It seems also that Arendt's own bisexual inclinations have been excised. We now know, for example, that one of her girlhood friends, the psychoanalyst Yela Lowenfeld, who had served as a witness at Arendt's first wedding, shunned contact with the philosopher for a time owing to Arendt's homoerotic advances. In the course of her life Arendt had a number of passionate relationships with other women. According to Mary McCarthy's biographer Carol Brightman, Arendt and McCarthy's friendship "bordered on romance; not sexual romance, but not entirely platonic either." In at least one case from the late 1940s—Paul Tillich's secretary Hilde Fränkel, whom Arendt had met in Germany during the early 1930s—there is compelling evidence to suggest that, for a time, and to Blücher's great dismay, friendship blossomed into romance. Thus, as Neumann observes, "It is likely that as far as Hannah's relationship to Hilde was concerned, in matters of amorous intensity nothing was lacking."

II.

FOLLOWING THE NAZI seizure of power, Hannah Arendt emigrated to Paris. She was profoundly disillusioned not merely with her fellow Germans, but with her intellectual brethren who, betraying their ideals, had opportunistically leaped on the Nazi bandwagon. Reflecting on the problem several decades later, she observed that

the problem ... was not what our enemies did but what our friends did ... Among

intellectuals *Gleichschaltung* was the rule, so to speak ... And I never forgot that. I left Germany dominated by the idea—of course somewhat exaggerated: Never again! I shall never again get involved in any kind of intellectual business. I want nothing to do with that lot.

Drawing the consequences from the failure of the "Jewish-German symbiosis," Arendt joined the World Zionist Congress. In 1935, she began to work for Youth Aliyah, preparing Jewish children for emigration to Palestine. During the mid-1930s, she resumed work on her biographical study of Rahel Varnhagen, the nineteenth-century *maitresse de salon* in Berlin, who, like Arendt herself, traveled the painful road from assimilation to Jewish self-affirmation. In retrospect, the immense autobiographical import of this book for Arendt seems clear: in good German literary fashion, she used it as a vehicle to work through her own disappointments as a German Jew.

The émigrés Arendt and Blücher met in 1936. Their respective backgrounds could not have been more diverse. She hailed from an upper-middle-class family in East Prussia, and spent her formative intellectual years pondering the mysteries of German *Existenzphilosophie* under the

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tutelage of the movement's demigods, Heidegger and Jaspers. Despite the political tumult of Weimar, she led (apart from her incipient interest in the Zionist cause) a fully apolitical existence.

Blücher, a non-Jew, came from a traditional Berlin working-class milieu. His father died in an industrial accident a few months before he was born, and he was raised by his widowed mother. In 1917, at the age of eighteen, he volunteered for military service. A year later, as Germany endured both military and domestic collapse and the political climate shifted decisively to the left, he joined one of the autonomous soldiers' *Räte*, or "councils," that mushroomed throughout the country toward the war's end. He also became a member of the ill-fated Spartacist League led by Rosa Luxemburg and Karl Liebknecht. Their brutal murders in 1919 by Freikorps troops who had essentially been granted a license to kill by the reigning Social Democratic government—foreshadowing the future assassinations of other left-wing political leaders such as Leo Jogiches, Eugene Leviné, Gustav Landauer, and Kurt Eisner—became a fork in the road in the history of European socialism.

Following the failure of the German Revolution, Blücher joined the fledgling German Communist Party (KPD). His closest friend at the time, Heinrich Brandler, had become party leader, but in 1923 Brandler fell afoul of apparatchiks in Moscow. He was branded a "Trotskyist," and his star quickly faded, and the "left opposition" was soon installed at the helm of the KPD, which, like other Western parties, was Bolshevized. Years later in *Men in Dark Times*, Arendt offered an penetrating account, inspired by her husband's personal experiences, of these years of political disillusionment:

Rosa Luxemburg's death became the watershed between two eras in Germany; and it became the point of no return for the German Left. All those who had drifted to the Communists out of bitter disappointment with the Socialist Party were even more disappointed with the swift moral decline and political disintegration of the Communist Party, and yet they felt that to return to the ranks of the Socialists would mean to condone the murder of Rosa.

Those reflections foreshadow Arendt's own political orientation: a dewy-eyed embrace of workers' councils, which she viewed through the lens of Blücher's youthful Spartacist fling.

Following the political setbacks of the postwar period, and in the Weimar Republic's (short-lived) return to political

stability, Blücher began to pursue more bohemian cultural interests. To the chagrin of his KPD comrades-in-arms, he befriended a variety of novelists, painters, and chanteuses, and soon he became a fixture in the demi-monde of Berlin. His closest friend at the time was Robert Gilbert, an *haut bourgeois* turned circus ringmaster who later achieved renown as a Tin Pan Alley style-composer. With financial support from Gilbert, Blücher was able to eke out a colorful existence as a bon vivant, attending art openings, writing film reviews, and frequenting cabarets. He seems to have broken quite a number of hearts in the course of his prowlings.

Prior to meeting Blücher, the thirty-year-old Arendt had endured a string of star-crossed romances. After parting ways with Heidegger, she began a two-year affair with Benno von Wiese, a talented scholar of German literature who, during the mid-1930s, sought to make peace with the Third Reich by demonstrating that Herder's concept of the *Volk* was a precursor of Nazi racial doctrine. In 1929 she married Günther Stern, a fellow Heidegger student who, after the war, under the *nom de plume* Günther Anders, would make a name for himself as a critic of the nuclear arms race. But this match, which had been eagerly promoted by Arendt's mother—who had been impressed by Stern's family pedigree: his parents were pioneers in the field of child psychology—broke down rather quickly.

SO THERE HAD been a series of amorous disappointments (in her first letter to her future husband, Arendt mentions that for some time she had "stopped being a woman"); and on meeting the gallant Blücher she proceeded with caution. Moreover, they were both married at the time, Arendt to Stern and Blücher to the Lithuanian-born Natasha Jefroikyn. (That Jefroikyn was his second wife was a fact that Arendt would discover by chance a year later.) Blücher, who still traveled in Communist émigré circles, cultivated an aura of mystery: he adopted the undercover persona of the dandified bourgeois tourist "Heinrich Larsen," he carried no papers, and according to a friend he changed residences so often that "he didn't know where he lived."

A few months after they met, Arendt traveled to Geneva to attend the founding of the World Jewish Congress. In fine German romantic fashion, their relationship was "consummated" by correspondence. Blücher, the wooer and the former student of military strategy, mobilized an army of metaphors and literary citations to convince the "maiden from

afar" (Arendt's preferred self-description, adopted from an ode by Schiller) of the sincerity of his intentions. Quoting Goethe in a spirit of ribald *double entendre*, his first letter implores: "You have untuned and upset my entire instrument." Borrowing from the German naturalist writer Arno Holz, he continues: "A day without you is no day." And in his own florid words: "The Paris sky is of the opinion that, in view of your absence, there is no reason to be sunny. I am of the same opinion, and endure both its and my clouded state, accepting its necessity. O acolyte of Kant, with a gentle breath of dignity."

THESE LETTERS ARE a revelation in so far as they allow Blücher—the man who spent his life waiting patiently in Arendt's long shadow—the well-deserved opportunity to step into the limelight. In *Within Four Walls*—the title stems from Arendt's exclamation, "Snubby [her pet name for Blücher], you are my four walls"—the man who, like his beloved Socrates, never wrote a word has finally been granted the opportunity to have his say. And he certainly makes the most of it. Part Socrates, part Schweik, and a complete Berliner, worldly, erudite, and possessed of remarkable political savvy, Blücher comes across in his letters as a real character, and a man whom it would have been delightful to have known.

His letters of the 1930s offer moving testimony about the unraveling of the Popular Front and the Communist movement amid the high tide of Stalinism and the Moscow Trials. Blücher relates sad tales of brutally executed German comrades ("X is dead. Neither I nor the others could save him"; "Westermann was killed in prison in Hamburg; next to André, he was the best man we had"), and he describes in detail bitter sectarian disputes among his fellow left-wing émigrés ("the rifts in the movement keep getting bigger, the struggle increasingly blind"). His own vestigial revolutionary aspirations would come to grief with the Hitler-Stalin Pact in 1939.

Arendt's first letters include desultory but haughty descriptions of the goings-on at the Congress ("The language of negotiation: Yiddish—and Hebrew; the latter . . . is not a language but a national disaster"; "the attendants at the Congress can be grouped into the Messiah trumpeters and rationalists. I belong to the latter group"). They also confirm that Blücher's tender and witty epistles had produced their desired effect. In one of his early missives, he chivalrously offered her a permanent place in his heart: "There are three chairs in the room. If you would like to take the

same one you sat on last time, next to me, then Robert [Gilbert] can have the other one." Keenly aware of their political, religious, and class differences, Arendt's response carefully weighs the pros and cons of their togetherness: "That indeed is the question: *Can I take a seat in that third chair that you have so generously offered me? ... You yourself said 'everything speaks against it.'* What is this 'everything'—apart from prejudices and the difficulties and the petty fears—except that we might not have a world in common?"

Blücher declares his love—"Liebste, ich liebe dich"—and Arendt responds in kind, as though her innermost dreams had been realized: "I am a little bewildered and crazed that all my stupid ideas weren't true and that you are still with me. My dearest, I think I love you. I mean it. And slowly very slowly, I am beginning to see that no reasons should stand in the way of love." (And she cannot stop herself from adding skeptically: "If only I didn't have such damn good reasons.") A few months later, upon realizing that her romantic aspirations had at long last been fulfilled, she exclaims euphorically: "You see, dearest, I always knew, even as a kid, that I can only truly exist in love ... It seems incredible to me that I managed to get both things, the 'love of my life' and a oneness with my self. And yet, I only got the one thing when I got the other ... Finally I know what happiness is." The die was cast. They would spend the next thirty-four years of their lives together, separated only by Blücher's death in 1970.

IF EVER THERE was a point where their relationship seemed in danger of collapsing, it was during the clash of antithetical worldviews—Zionism and communism—that surfaced during those exhilarating first months. In a remarkable letter on August 21, 1936 that Arendt received while she was still tarrying among the "Messiah trumpeters," Blücher deftly outlines his own solution to the "Jewish question." The only way Jews might survive the poisonous combination of anti-Semitism and nationalism that was sweeping Europe, he contends, would be for them to cast their lot with the aims and the interests of the international working class. The oppression that the Jews experience at the hands of their own bourgeoisie is merely a reflection of the general exploitation to which the European proletariat has been subjected. "If anti-Semitism is the ferment of racial hatred," he argues confidently, "then this concrete question will be able to turn itself dialectically into one of the ferments of world revolution."

In a passage that faithfully reproduces the left-wing pieties of the period, Blücher

summarizes his position thusly:

Do not the Jews have every reason to throw themselves with mortal courage into battle with Fascism everywhere? How come nobody has envisioned the right to demand a separate Jewish combat unit against Fascism in Spain? Instead of learning from Hitler the lesson that it is high time they took with great seriousness his bad joke that Jews are one with revolutionary Marxism, they launch horribly chatty attempts pitifully to substantiate, after the fact, his fable of the wise men of Zion through World Congresses of Fools in Geneva, which in actual fact are affairs of the cunning men of London.

Then, offering a parable worthy of fellow émigré Walter Benjamin ("Benji" was a frequent guest at Arendt and Blücher's Paris apartment in the 1930s), he concludes as follows:

A man who had once wanted to become a German philosopher adds to this: As a hallowed parable a book is given the Jews in which is written everything that was, is, and will be in the world. But the book is merely a cabalistic emblem for life itself. And there they now sit, the poor Jews, and peer into the book with eyes grown myopic and cannot see life. Only their one true miracle—rabbi, Karl Marx, managed to peer sharp-sightedly between the lines with the burning fire of his warrior eyes and open the great book of life.

Arendt, while averring that she is "proud" to have received such a letter, confutes Blücher's arguments point by point. The messianic rumblings of contemporary Zionism, she insists, are not meant literally. "Surely you realize," she retorts, "that this obstinate little people busies itself with horn-blowing just to stay in practice so it can growl every Messiah away. *None* of the Messiahs is the true one." As for Blücher's insinuation that the Jewish desire for a homeland in Palestine is little more than an anachronistic pipe-dream, she responds, appropriately, by citing Herder: "Palestine is not at the center of our national aspirations because 2,000 years ago some people lived there from whom in some sense or other we are supposed to be descended, but because for 2,000 years the craziest of peoples took pleasure in preserving the past in the present, because for them 'the ruins of Jerusalem are, you could say, rooted in the heart of time.'" Finally, she rebuts Blücher's facile internationalism by claiming that, in view of the present dire historical circumstances, what Jews need is

a healthy dose of "plain, unambiguously self-serving politics! Voilà!"

WITH THE STORM clouds of the European catastrophe closing in around them, Arendt and Blücher plotted an escape whose unforeseen twists and turns put the reader in mind of *Casablanca*. With the outbreak of war, Blücher, a German national residing in France, was interned in a camp. Afflicted with a kidney ailment, he spent a good deal of time in the infirmary. He busied himself by studying the *Critique of Pure Reason*, a sign of his changed political sympathies. In one of his letters from the camp, Blücher, in characteristic shoot-from-the-hip fashion, set forth his new "republican" political credo. World politics, he claimed, was no longer a question of "capitalists vs. proletarians" but (in an anti-Stalinist jibe) a question of "Cossacks vs. Republicans": "As Napoleon predicted on St. Helena, Europe is faced with the option of whether it wants to be ruled by Cossacks or by Republicans. That's the question. Now the first Cossacks are on the banks of the Rhine, and the last are still in Moscow." Without exaggeration, he concluded: "This is the most dangerous period in the history of civilization."

As a result of the intervention of a German benefactress, Blücher was released from the camp in December 1939; and a few weeks later he and Arendt were married in Paris. But that spring, with the end of the *drôle de guerre* and the resumption of open hostilities, Arendt and Blücher were interned in separate camps—and fortunately her camp, in the southern town of Gurs, lay in the unoccupied zone. Faced with the very real prospect of being handed over to the Germans, Arendt later avowed to having seriously contemplated suicide. Following a miraculous reunion in the town of Montauban and a close brush with the Vichy police in Marseilles, she and Blücher were among the lucky few who succeeded (more precisely, for whom Varian Fry succeeded) in acquiring papers—including the coveted French "exit visas"—permitting emigration to the United States.

Almost all the Jewish émigrés who were not so fortunate, such as the Blüchers' friend "Benji," failed to survive the war. It was during their last meeting in Marseilles that Benjamin entrusted Arendt with his "Theses on the Philosophy of History," in which he urged historians to "brush history against the grain" by uncovering "now-times" or moments of rare messianic promise. Arendt was charged with delivering Benjamin's precious manuscript to his friends at the Institute for Social Research in New York. Despairing over prospects for immanent

historical change, Benjamin famously appealed in his "Theses" to the secret "temporal index" by which the past is referred to as "redemption." Thus, he concluded, "every second is the strait gate through which the Messiah might enter." As the Blüchers waited in Lisbon for the arrival of the ship that would carry them to the New World, they read their doomed friend's "Theses" aloud to their fellow refugees.

III.

FOR THE SECOND time in eight years, Arendt and Blücher were forced to endure the travails of emigration: learning a new language and accustoming themselves to the habitudes of a new land. A refugee service placed Arendt with a family in western Massachusetts, where she worked as an *au pair* for approximately three months. Blücher, meanwhile, looked after their new flat in New York on the Upper West Side, where Arendt's mother, who had arrived on a later crossing, also had an apartment. For both émigrés—Arendt was in her mid-thirties, Blücher was over forty—the adjustment process proved trying. "With my English," writes Arendt, "things are so-so—I'm beginning to understand bits and pieces when people talk with each other, but when I speak it's a disaster." Blücher's language-acquisition experiences were hardly more encouraging: "When your Stradivarius has been filched and you are forced to pay an incredible price for a beer-fiddle—for that is all a foreign language can ever be to you—then you should at least refuse to start studying all over again just for a license so you can play the beer-fiddle."

The "culture shock" ran deep, and they never entirely got over the feeling of exile and estrangement. Their first impressions reflect a acute sense of displacement and disorientation. "It is becoming increasingly clear to me that this hodgepodge of nationalities here is lost without Europe," remarks Arendt in one of her first letters from Massachusetts, struggling to find her bearings. Blücher offered the following words of consolation: "My sweetheart, don't let yourself be dragged down. This horror will come to an end, and we'll get to laugh about the whole charade that the bourgeoisie has set up for themselves." For the Blüchers felt that in many respects they had escaped from a murderous, European version of modern mass society to a relatively benign one.

Blücher was never satisfied with these living arrangements. He believed that Arendt's mother saddled her daughter with unreasonable demands ("what really infuriated me was the way she constantly sucked your blood and her total lack of

respect for your accomplishments"). Moreover, he felt her presence as a constant reproach, given his own principled unwillingness to seek gainful employment. As Blücher observed shortly after Martha Arendt's death in 1948: "The old woman just made it all unbearable. She pointed out to me, a little too clearly, the limited but powerful justification of the bourgeois standpoint." (There was a time when people complained about their mothers-in-law in such terms.)

WHILE ARENDT BUSIED herself with a variety of intellectual pursuits—professor of history at Brooklyn College, editor at Schocken Books, and director of research for the Jewish Cultural Reconstruction Organization (all the while researching her great book, *The Origins of Totalitarianism*)—Blücher, the autodidact and confirmed bohemian, spent his days re-reading the classics of Western philosophy. In a letter written the same year, he offered the following potted summary of his conclusions: "In two days and a night I saw in clear progression the new conceptual whole, the consolidation of my objective . . . Now I am far away from the Giants and the Titans. Kant was a servant, Nietzsche a master, Marx a despot, and Kierkegaard a slave. And I am a 'prospective citizen.'"

Despite his aversion to the bourgeois ethic of achievement, Blücher ultimately found vocational success—or, more precisely, success eventually found him. In 1950, the transplanted Berliner visited an artists' club in Greenwich Village to listen to a panel discussion on André Malraux's *The Psychology of Art*. The discussants were to have been Meyer Schapiro and Joseph Frank; but both men failed to show up and Blücher was hastily pressed into service. His talk was a resounding success, and the audience plied him with questions until late in the evening. More opportunities to lecture on modern art followed. As he wrote to Arendt with uncharacteristic ebullience: "Maybe there's an opportunity here for 'making a living.'"

Indeed there was. With Alfred Kazin's assistance, Blücher secured a lectureship at the New School for Social Research. In 1952 he began teaching at Bard College, where, a few years later, he assumed responsibility for the "Common Course" that was required of all students. On the Bard campus he acquired legendary status as a type of latter-day Socrates. The students fondly trafficked in Blücher's anecdotes and witticisms. Disciples faithfully taped his lectures, which seemed in no small measure designed to jar students out of their middle-class lethargy ("In the history of Christianity there have been no

miracles, except perhaps that it has lasted for almost two thousand years").

FOR THOSE FAMILIAR with Arendt's formidable talents as a polemicist, it will come as little surprise that her letters reveal her to be a person quick to form harsh and peremptory judgments. To her *Partisan Review* friends she was known as "Hannah Arrogance." Aside from members of the "tribe," the Blüchers' term of art for their trusted circle of friends—Randall Jarrell, in *Pictures from an Institution*, would characterize the couple as the "dual monarchy"—Arendt in her letters has few kind words to say about anyone. Bertrand Wolfe, who played a pivotal role in securing her a Guggenheim Fellowship in 1952, is "a pompous ass." The Italian writer Alberto Moravia is "vain and foolish . . . à la [Stefan] Zweig." In Paris in 1952, Arendt declines to see Sartre and Simone de Beauvoir, declaring that, "it's pointless. They have immersed themselves completely in their theories and live on the moon à la Hegel." She uncharitably depicts the Berkeley sociologist Leo Lowenthal, who generously chauffeured her around Northern California on various sight-seeing expeditions while she was a visiting professor at the University of California in 1955, as "stupid and not much of a character," though she has few qualms about asking Lowenthal to lug her winter coat back to New York on an upcoming plane trip. And Theodor Adorno is "one of the most repulsive human beings I know."

Adorno was certainly no darling, but Arendt's characterization strikes one as a classic instance of one soiled kitchen utensil defaming another. When, in the early 1940s, she learned from Gunther Stern that the publication schedule for Walter Benjamin's "Theses on the Philosophy of History" was uncertain—Arendt had dutifully provided a copy to Adorno in New York, but the Frankfurt School's literary organ, *Studies in Philosophy and Social Science*, had suspended publication in 1941—she predictably launched into a tirade, in a letter to her husband: "I take it that the group of bastards [the Frankfurt School] . . . will simply suppress the manuscript . . . [I'm] so terribly furious that I could murder the whole lot of them. Benji is paying a high price for some peace and security." As it turned out, Arendt worked herself up over nothing. In 1942, Adorno and company faithfully published a small memorial volume, *Walter Benjamin zum Gedächtnis*, containing Benjamin's "Theses" along with an accompanying series of philosophical tributes. And in the mid-1950s, Adorno co-edited a two-volume edition of Benjamin's *Schriften*, a

collection that catapulted "Benji" to post-humous literary renown.

IV.

WITHIN FOUR WALLS raises the important question of the ways in which Blücher's experiences and political orientation as an ex-communist influenced Arendt's understanding of world politics. Given her youthful preoccupations with "first philosophy" and her avowed lack of "worldliness," it would appear that his influence was immense. Blücher's aversion to writing was no doubt reinforced by his wife's prodigious talents in this sphere; and in a letter in February 1950 he contrives the following amusing fable to explain his "absence of work": "The good fairy proclaimed: 'This boy shall have power of judgment,' and the evil fairy interrupted her and finished the sentence, 'but nothing else.' And that seems to be that." By all accounts, he more than compensated for these acute literary inhibitions with his keen sense of political judgment, upon which his wife freely relied. As she writes to Blücher during the late 1930s: "Snubby the Clever, Snubby the Wise—*quant à moi je ne comprends rien de la politique actuelle* [as for me, I don't understand anything about contemporary politics]."

In 1946, as Germany staggered out of the heaps of war-induced rubble, Arendt's mentor Karl Jaspers published a treatise titled *The Question of German Guilt*. (The contrast with Heidegger's notorious "silence" about such matters speaks volumes.) It was a question that the great mass of Germans were averse to contemplating, despite—or because of—the plethora of Allied signs adorning liberated concentration camps that read, "You are guilty of this!" After all, hadn't they, as Germans, suffered as much as anyone under Hitler's rule? But in his lofty and somewhat mandarin book, Jaspers enumerated four levels or gradations of guilt, on which he then commented in detail: criminal, political, moral, and metaphysical. His well-intentioned efforts fell on deaf ears, and the discussion that he had hoped to incite failed to take place.

Reading Jaspers's book, one is struck by the extent to which it is couched in the idiom of Lutheran-Romantic "inwardness"—and by the fact that it studiously avoids all attempts to understand Nazism in concrete historical or political terms. Upon perusing Jaspers's lofty summons to German spiritual repentance, Blücher delivered the following caustic rejoinder:

Jaspers's guilt-monograph, despite all its beauty and noble-mindedness, is an *anathematized and Hegelianized*,

Christian/pietistic/hypocritical nationalizing piece of twaddle . . . Jaspers's whole ethical purification-babble leads him to solidarity with the German National Community . . . instead of solidarity with those who have been degraded . . . Wearing the thick spectacles of the Romantic *Volk*-concept, he seeks the nature of the true German, which is probably distinguished from the nature of the false German merely by the fact that it is even more meaningless. And in order to find this phantom, he accepts a truly Lutheran servitude in a Hegelian way . . . Germany finally has the opportunity to make clear the fronts of the real civil war of our times, Republicans against Cossacks, in other words the battle of the Citizen against the Barbarian . . . Instead, Jaspers is calling for loving understanding and discussion, in order to establish the essence of the real German.

The ways in which Blücher shaped Arendt's political worldview are no doubt manifold; but one expression of his influence in particular bears emphasis, insofar as it helped form the core of Arendt's understanding of modern politics, especially the phenomenon of totalitarianism. As an ex-communist, Blücher had firsthand experience of totalitarianism in its Stalinist incarnation. It was largely from Blücher, the former member of the Spartacist League and the KPD, that Arendt derived her contempt for "the bourgeois," though the German mandarin circles that Arendt frequented during the 1920s viewed "the bourgeois" as a social type with similar disdain. Time and again Arendt reiterated that Nazism was not a phenomenon peculiar to German history but an outgrowth of bourgeois society.

Her first articulation of this questionable historical derivation of Nazism may be found in her essay "Organized Guilt and Universal Responsibility," which was written in 1945. The Nazi malefactors, Arendt insisted, were neither bohemians, nor adventurers, nor heroes. They were "bourgeois," and typical representatives of mass society. The Nazi higher-ups, she claimed, were "family men" who were essentially in search of job security and career advancement. As she explained, the average SS member is

a "bourgeois" with all the outer aspect of respectability, all the habits of a good *paterfamilias* who does not betray his wife and anxiously seeks to secure a decent future for his children; and he has consciously built up his newest terror organization . . . on the assumption that most people are not Bohemians nor fanatics, nor adventurers, nor sex

maniacs, nor sadists, but, first and foremost *jobholders and good family-men* . . . Himmler's overall organization relies not on fanatics, nor on congenital murderers, nor on sadists; it relies entirely upon the normality of jobholders and family men.

ARENDT'S UNDERSTANDING OF Nazism as an outgrowth of "bourgeois society"—a foolish notion that was fairly widespread among members of the political left during the 1930s (again, the unmistakable traces of Blücher's influence)—is deeply unsatisfactory. Such an account remains incapable of explaining why it was that certain bourgeois societies became totalitarian whereas others were able without much difficulty to resist such degenerative political tendencies. Remarkably, Arendt never stopped to consider the obverse thesis that it may have actually been the political weakness of Germany's bourgeoisie vis-à-vis traditional German elites (the Junkers, the army, the intellectual mandarin, and so forth) that paved the way for the success of Hitler's "Brown Revolution."

Two decades later, Arendt's derogatory characterization of "the bourgeois" would subtend the international commotion that surrounded *Eichmann in Jerusalem*, which she had provocatively subtitled "A Report on the Banality of Evil." Clearly the idea that Nazi crimes were in certain respects unexceptional or "banal" originated in her earlier depiction of SS officers as "normal jobholders and family-men" in "Organized Guilt and Universal Responsibility." With the publication of the Arendt-



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Jaspers correspondence, moreover, we are now aware of the fact that it was Blücher who had originally suggested this hotly disputed phrase. As Jaspers writes to Arendt in December 1963: "Heinrich suggested the phrase 'the banality of evil' and is cursing himself for it now because you've had to take the heat for what he thought of."

The Arendt-Blücher correspondence sheds little new light on the *Eichmann in Jerusalem* controversy. When it erupted in the spring of 1963, Arendt was in Basel to participate in a celebration in honor of Jaspers's eightieth birthday. As Blücher wrote from New York: "Many phone calls are flooding in for you. You should be glad that you're not here."

V.

WITH THE COLLAPSE of totalitarianism in 1989, some fourteen years after Arendt's death, her star rose to unprecedented heights. In Germany there are two Hannah Arendt Institutes: a left-leaning outfit in Bremen, which is allied with the German Greens, and a Center for Research on Totalitarianism in Dresden. The city of Bremen offers a Hannah Arendt Prize; her visage adorns a postage stamp; and there is even an Intercity train named in her honor that travels regularly between Frankfurt and Hamburg. A woman, a Jew, and a German émigré philosopher, she made an illustrious name for herself on two continents.

Still, one cannot help but wonder whether beneath the celebratory glow surrounding her person and her achievement there lies concealed a deeper, unspoken truth. The truth is that, in an age of ideological fanaticism, not only did Arendt manage to remain untouched by the totalitarian virus, whose temptations corrupted the judgment of so many intellectuals on both sides of the political spectrum—but she also remained untouched by the "taint" of political liberalism. That is why Arendt's political philosophy seemed to offer a number of promising alternatives, for those on the political left who, following Marxism's demise, held out hope for a "third way" beyond the Cold War ideological stalemate.

At the time of the Hungarian uprising in 1956, she enthusiastically embraced the idea of "workers' councils," which had also played a pivotal role in the German Revolution of her and Blücher's youth. For Arendt, the *Räte* or councils symbolized an eruption of "freedom" that she no longer thought possible amid the political straitjacket of modern mass society; and this idea would become a touchstone for her subsequent political thought. Thus, in *The Human Condition*, she lionized

"action" as the capacity for "people ... to act in concert"—a view that she contrasted with the debased nature of the modern party system, corrupted beyond repair by interest groups, pollsters, and technocrats. When, in *On Revolution*, she celebrated the "elementary republics" of pre-revolutionary America, in many respects she merely projected the "council" experience backwards into history.

AS A RESULT of her glorification of "action" and of the power of "people acting in concert," Arendt has become the darling of the "participatory democracy" crowd in the American academy. It is hard not to share her misgivings about the extent to which "interests" have undermined the egalitarian promise of contemporary democratic practice; and yet it is also impossible to overlook that the brazenly aristocratic biases of Arendt's political thought disqualify her from leading the charge on behalf of participatory democracy.

For Arendt never made any bones about her view that (as she observes in *The Human Condition*) "authentically political talents can assert themselves only in rare cases" and (in *On Revolution*) that "the political way of life never has been and never will be the way of life of the many." Toward the end of *On Revolution*, she sings the praises of a self-selecting political elite: "they are the best, and it is the task of good government and the sign of a well-ordered republic to assure them of their rightful place in the public realm." Even were their predominance to "spell the end of general suffrage," Arendt views this eventuality as no permanent loss: "such an 'aristocratic' form of government would spell the end of general suffrage as we understand it today; for only those who as voluntary members of an 'elementary republic' have demonstrated that they care for more than their private happiness and are concerned about the state of the world would have the right to be heard in the conduct of business of the republic." This, liberalism?

Arendt may be a "republican" political thinker in the mold of Aristotle, Cicero, Tacitus, Machiavelli, and Burckhardt; but given the avowedly elitist biases of her thought, it would be a misnomer to invoke her legacy in support of the contemporary vogue for "deliberative democracy." As Margaret Canovan has astutely remarked in *Hannah Arendt: A Reinterpretation of Her Political Thought*, "As we explore [Arendt's] theory, the action and self-disclosure that apparently started as general human capacities seem to be narrowed down until they become rare human achievements." Canovan concludes her criticism by observing that, for

Arendt, "those who live their lives in this shadowy way [as excluded from the realm of political participation] without ever fully affirming their identity seem to include the vast majority of the human race." Arendt's thought is not very serviceable, then, for the purposes of contemporary democratic practice.

ARENDT'S ANTIPATHY to political liberalism, which many of her supporters paradoxically view as one of her strengths, is deeply troubling. In many respects, she never overcame the generational prejudices of her German mandarin peers, for whom "liberalism" was merely the logical political corollary of an atomized and dissolute "mass society." In her work liberalism's deficiencies took on the quality of an unalterable ontological constant, in the manner of Heidegger's denigration of "publicness" and "the they" in *Being and Time*.

In *The Origins of Totalitarianism*, Arendt erroneously attributed totalitarianism's emergence to the rise of modern (read: liberal) society. Once the safeguards of tradition had been obliterated, she maintained, there was no stopping the Leviathan of modern dictatorship. But one could just as easily—and more plausibly—reverse the terms of Arendt's argument and claim that in fact it was the failure of liberalism to take hold in nations such as Germany and Russia that accounted for totalitarianism's rise. That both nations underwent a belated and ambivalent transition to modernity suggests that "society" as such was not to blame for their subsequent political degeneration. Instead, in both cases a peculiar hybrid of traditional and modern patterns of domination seems to explain more than Arendt's blanket condemnation of "society." Moreover, her theory is quite incapable of explaining why some modern societies remained immune to the totalitarian lure whereas others did not. In truth, in almost all cases it seems that the successful assimilation of political liberalism represents the decisive factor, the real condition for resisting the seductions of totalitarianism.

Arendt's distaste for political liberalism was accompanied by a corresponding denigration of a political culture predicated on "rights." Her conclusions were in part based on biographical experience: as a "stateless person" during the interwar period, she witnessed the impotence of international agencies, such as the League of Nations, charged with enforcing human rights claims. (In apportioning blame, though, the ultimate responsibility should be laid at the door of those lands in which radical nationalism was preferred to the organs of international

law.) In *The Origins of Totalitarianism*, she goes so far as to include an anachronistic vindication of Edmund Burke's traditionalism in contrast to Thomas Paine's celebration of "the rights of man," falsely insinuating that "rights" were better safeguarded under the inegalitarian conditions of the *ancien régime* than in modern democratic societies.

But the opposition between "rights" and political participation (or, in Arendt's parlance, the virtues of "action") is a false one. Liberal rights—freedom of speech, assembly, and the press—represent the indispensable basis for democratic participation. Arendt was undoubtedly correct in identifying the blandishments of consumer society as in large measure responsible for depleting modern political will; but her own ideal of political will in its proper condition is deeply anti-liberal and thoroughly unattractive.

Arendt's studied aversion to liberalism culminated in her one-dimensional treatment of liberal political thought in *The Human Condition*. For Arendt, it was as though Hobbes's *Leviathan*, in which the inequities of society as the *bellum omnium contra omnes* could be offset only by the evils of political autocracy, contained the hidden truth of liberal society as such. Her discussion of Locke is especially curious, as it consists in a truncated Marxist interpretation: Locke is viewed exclusively as a crude ideologue of "laboring society" or "bourgeois society." (For the mandarin conservative Arendt, there was no significant difference between a laboring society and a bourgeois society.) In Arendt's view, this is a society that knows no higher end than the accumulation and the consumption of wealth; a society that remains trapped in the "life process" and knows only the biological ends of self-reproduction; a society that, in Aristotelian terms, remains preoccupied with "mere life" rather than the "good life", and therefore is devoid of political "virtue."

Locke certainly was an apostle of social labor, but as a political philosopher he was also many other things. He was a theorist of "popular sovereignty." He was a defender of natural right, and of the separation of powers, and of the right to rebellion. It was Locke's political thought that provided the conceptual armature directly responsible for delegitimizing the monarchical despotism of the *ancien régime*. Nor did any of the *philosophes* who succeeded him—Montesquieu, Voltaire, Diderot—doubt for a moment the progressive implications of Locke's political doctrines. That Arendt, as a critic of modern political tyranny, was unable to do justice to these important facets of Locke's thought reveals a great deal about

the limitation and the tendentiousness of her analytical framework.

In *The Human Condition*, other thinkers in the liberal tradition do not fair much better. Mill, who managed to append to liberal individualism a strong theory of human self-realization, simply does not appear. Even more strangely, Arendt views her *Landsmann* Kant (both hailed from Königsberg), who is best known for his fiercely principled maxim that one must treat "rational [i.e., human] natures as ends in themselves and never as a mere means," under the rubric of utilitarianism. To be sure, this rather dismissive appreciation of Kant would soon change. In her *Lectures on Kant's Political Philosophy* she came to view his doctrine of judgment, rightly, as an indispensable cornerstone of modern political understanding. But she remained more a disciple of Heidegger than of Kant.

These attitudes and observations led Arendt to drastically underestimate the elements of openness, fairness, and constancy that a genuinely liberal political order can foster. Following the collapse of communism, these are the concrete results—however imperfect and flawed—that we have come to expect from a proper realization of the precepts of liberalism. Certainly, the spaces engendered by "elementary republics" and "workers' councils" are heady ones; but in such rarified air no contemporary "really existing democracy" can breathe for any extended period of time. And so this great survivor of totalitarianism has little to teach in the wake of its recent collapse. For the new open societies of the East, as for the old open societies of the West, Arendt's thought has remarkably little practical value. If that is ironic, it is a damning irony. ■

The Aural Tradition

By JEREMY EICHLER

First Nights: Five Musical Premieres by Thomas Forrest Kelly

(Yale University Press, 387 pp., \$29.95)

THESE IS A myth of the premiere in music that sees the very first performance of a masterpiece as something Sinaitic, a veritable experience of revelation. It, too, was a unique event in the distant past when a great truth was gloriously unveiled. It, too, was instantly received with clarity and rapture. And it, too, precisely captured its author's intentions, and established the only legitimate version, the sacred version, of what was communicated—so that the first performance of a work is the best performance of a work, the one that exactly reflects the composer's ideas, scrupulously rendered by a well-rehearsed ensemble. And as with all revelations, the myth of the premiere can still inspire legions of contemporary devotees to strive to return to that numinous day, to make their music sound now as it sounded then.

Well, it ain't necessarily so, says Thomas Forrest Kelly. In his smart and lively book, Kelly meticulously reconstructs the opening nights of five pillars of

the Western musical canon: Monteverdi's *Orfeo* in 1607, Handel's *Messiah* in 1742, Beethoven's Ninth Symphony in 1824, Berlioz's *Symphonie fantastique* in 1830, and Stravinsky's *Le sacre du printemps* in 1913. From explaining the floor plan of Mantuan palace in which the premiere of *Orfeo* took place to imagining the bounce of Handel's wig in conducting the first performance of the *Messiah*, no detail is too small for Kelly. The result is a delightful, even playful book, replete with precious nuggets of information through which Kelly indulges our (and his) impulse to be there then knowing what we know now, to view history as it was being made.

In so doing, Kelly obliterates the myth of the premiere. Far from receiving an absolute truth, those present at these revelations were more often given half-glimpses of unpolished works in their infancy. That is, when they could hear the music at all. (Kelly speculates that few who attended the fabled premiere of *Le sacre du printemps* in Paris could hear much of anything above all the shouts of protest, including the dancers themselves.) More often, the premieres were

JEREMY EICHLER writes about music for *Newsday*.

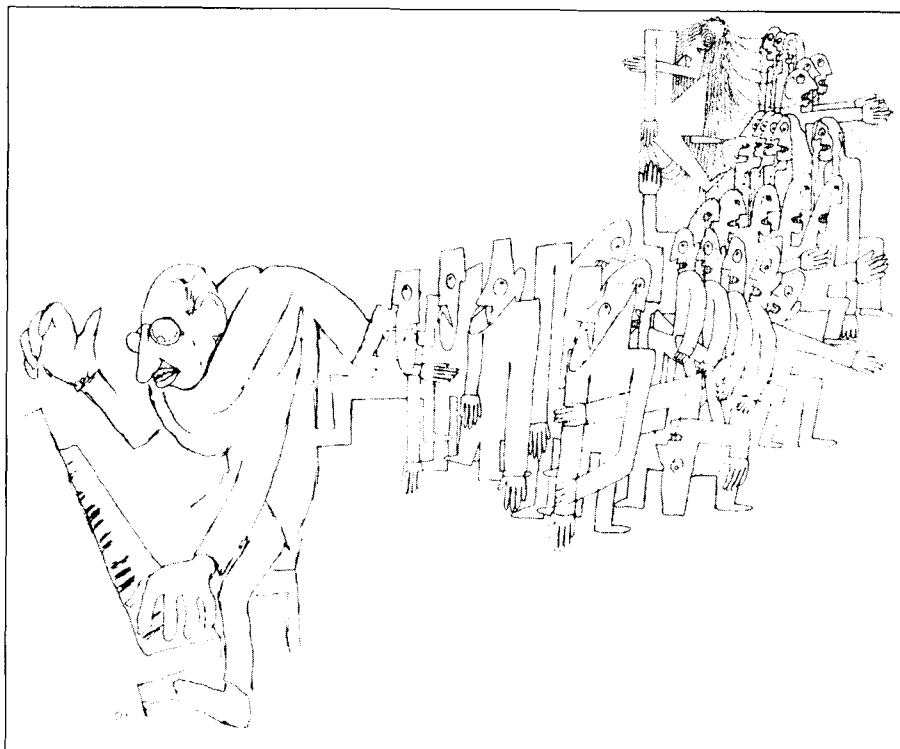
under-rehearsed—Beethoven's Ninth had just two full rehearsals—and shoddily thrown together—Berlioz was still scrambling for mutes for the violas on the day of the premiere of his *Symphonie fantastique*. Needless to say, the final results of the performance were not always as triumphant as one might imagine for such an auspicious event. If the piece was received well, this was often in spite of, not because of, the performance it received.

BUT KELLY, THE author of a pristine treatise on Beneventan (or pre-Gregorian) chant, is up to much more than a time-travel book for the historically-minded voyeur. He knows that the works he has chosen, with the possible exception of *Orfeo*, have been played to death. (In New York alone, Handel's *Messiah* was performed no fewer than eighteen times in the space of three weeks last winter.) Victims of their own popularity, these pieces desperately need to be heard afresh—and Kelly sets out to help us remove the dank, musty air that has dimmed our senses to their potency.

He restores a sensation of wonder at the remarkable beauty of this familiar music; and he restores also the power of these pieces to startle and to shock. This clearing of our ears, of course, requires our participation. Kelly asks the reader to let go of that Platonic form of Beethoven's Ninth to which we cling in our own heads—a version that is usually reinforced by listening over and over and over to a single fetishized recording (you know, the Karajan one)—and open ourselves instead to the immediacy of the first night. After all, he writes “[t]his is the only performance the piece has ever had, and it's happening now.”

Thankfully, Kelly has a talent for colorful narrative and lucid prose that conjures up the palpable excitement as well as the artistic birth-pains that attended many of these premieres. We learn, for example, that at the second and final rehearsal of Beethoven's Ninth, the austere composer stood at the entrance to the theater and thanked each of his amateur choristers with a hug. At the piece's premiere, the Scherzo was routinely interrupted by audience calls for repetition; and after the Finale, the crowd was shouting “Vivat!” so vociferously that it had to be silenced by a police commissioner. Six years later in Paris, the conductor François-Antoine Habeneck probably led *Symphonie fantastique* with a violin bow, and had a nasty habit of turning to the audience and singing out a musician who had flubbed a note.

Kelly also draws heavily from the written record, weaving in contemporary reviews and journalistic accounts, private



Jean Cocteau, Stravinsky playing “Le sacre du printemps,” 1913

correspondence, diary entries and anything else of potential relevance, including artwork and architectural sketches. Some of the accounts are remarkably vivid—for example, this double-bass player's description of first rehearsing the mystifying music to *Le sacre* with the conductor Pierre Monteux:

It is hard to describe the astonishment of the orchestra when we started. . . Except for Monteux, who had studied the score with Stravinsky, everybody was confused by the complicated rhythms, atrocious dissonances, and strange sounds to which our ears were not accustomed. Musicians started to stop Monteux, asking if the parts were correctly printed, wanting to know, for example, if “my B-natural is correct as my neighbor is playing B-flat.” This went on for a certain time until Monteux said angrily, “Do not stop me asking if you have a mistake. If you have one, I will let you know.” . . . We came to a place where all the bass instruments, in a gigantic fortissimo, produced such an offending conglomeration that the whole orchestra broke down in a spontaneous nervous laugh and stopped playing. But Stravinsky jumped out of his seat, furious, running to the piano and saying, “Gentleman, you do not have to laugh. I know what I wrote,” and he started to play the awful passage, establishing order.

Such stories, even if Kelly did nothing more than recount them, would be worth

the price of the book. And yet *First Nights* is also more than a highbrow appreciation guide. In the process of clearing our ears, Kelly makes some sharp and important points about the relationship of a work of art to the society around it, about the historically contingent nature of how we listen, and about the fatuousness at the heart of any notion of authentic performance. These points, born out exhaustively in Kelly's case studies, will give a reader pause long after the book's initial conceit has worn thin.

The book is organized chronologically into five parts, with a chapter devoted to each piece. In each section, Kelly sets the scene like a good historical novelist, adding details such as the printed request that “gentlemen arrive without their swords and ladies without their hoops” in order to avoid overcrowding at the Dublin premiere of *Messiah*. In addition to sketching the background, Kelly provides a large amount of information that at first might seem of questionable relevance, from the organization of a seventeenth-century Italian ducal household to the achievements of French aviators during the same year that *Le sacre* premiered. Taken together, though, these seemingly random facts illustrate an essential point of this book: that the works discussed are anything but “timeless” masterpieces, born of some disembodied, Romantic genius that transcended the society around itself.

No, these first nights, and the pieces themselves, are documents of their own

time and their own place. They are richly, hopelessly, inextricably bound to the society that produced them, and dependent on the efforts of hundreds of people, from performers and copyists, to politicians and audience members. Indeed, what the composers may have dreamed up in their extraordinary minds often varied dramatically from what their audiences heard—and not only because musicians made mistakes in performance, but because composers changed the music itself to suit the needs of these particular premieres. Handel, who Kelly provocatively describes as “a man of the theater,” replaced some of the *Messiah*’s arias with recitatives, presumably to ease the burden on his singers. Berlioz revised entire movements of his symphony after hearing them in performance. And even the titanic Beethoven transposed a high F-sharp to accommodate a recalcitrant bass soloist. These examples (and there are more) should make today’s purists shudder.

AND NOT ONLY was the music produced on these momentous evenings deeply dependent on the society from which it sprung. So too was the way in which the music was heard. The men and women in the audience, after all, were listening through the ears of their own day. They received the unfamiliar sounds with their own background knowledge of music, their own aural landmarks and constellation of references, and their own preferences in matters of taste. Hearing itself has a history. So, for example, Kelly writes of *Orfeo*:

A courtier in Mantua in 1607, familiar with madrigals, solo songs, and instrumental dances, might feel a special joy in seeing how a play cast in the well-known shape of a Greek theater piece uses familiar and unfamiliar musical styles to heighten and color the drama and bring the humanist poetry to life in a spectacularly modern fashion. That listener would be struck by the novelty of melding classical mythology, modern poetry, and the sometimes daring music of Monteverdi. Those attributes, however, may not be what strikes the modern listener first.

Likewise in Beethoven’s day, just as the musicians were valued highly for their ability to sight-read, given how little they rehearsed, so too were many listeners able to “hear at sight.” As Kelly observes, “the musically aware public had skills in listening that are lost to most of us. . . . They were not merely listening to the performance but listening *through* it to the music itself.”

New Page

Snowfall a perpetual soft
January snowfall

covers your tracks, and what follows

the period
left
by the needle

Franz Wright

The notion of audiences listening through the performance appears time and again in Kelly’s discussion. It is particularly suggestive in the light of its complete absence from our contemporary notions of concertgoing. Today the artistic merit of our standard works—the “repertory”—has been reinforced over centuries. The average listener no longer feels it necessary to evaluate the canonical works themselves. Instead, the quality of the concert *is* the quality of the performance. And with new contemporary works, given the attenuated listening skills of today’s audiences, it is almost impossible to imagine a premiere being received favorably despite a horrendous first performance.

STILL, KELLY DOES not go nearly as far as he could have in exploring the history of listening that runs parallel to his own subject. He misses an opportunity to discuss the fascinating transformations in aural habits that occurred between the first and the last of these premieres. Those changes included the diminution of amateur musical knowledge; the shift from the early romantic idea of music as something to be experienced to a score-driven model of music as a text that could be read and analyzed; the development of program notes; and biggest of all, the introduction of recorded sound. Each of these shifts fundamentally altered the concertgoing experience. They changed not only the way people listened, but also the way they later wrote about the impact of the music that they heard.

These changes in the way music was written about are also crucially important because of an obvious truism: in imagining music from the pre-recording era, the only way to know what people heard is by how they put it into words, how they filtered their musical experiences through language. Moreover, the words themselves—the manner in which music is discussed and written about at a given historical moment—can both mediate and

determine a listener’s experience in the concert hall. Accordingly, since Kelly draws so heavily on the written record surrounding these premieres, his account would have benefited by a more thorough exploration of how the nature of writing about music changed over time.

AND YET KELLY’S case studies still have plenty to say. Together they deal a crippling blow to that masochistic minority who still—even after the bitter early music wars of the 1980s—harbor illusions about the possibility of an “authentic performance.” Indeed, many of the devotees of the early music movement, which seeks to approximate how the music may have sounded through the use of period instruments and historically documented performance practices, might at first be heartened by the appearance of Kelly’s book, with its reams of detail about earlier incarnations of these works. But there is a delicious irony here. The historical details are precisely what sustain the argument against the possibility of perfect reproduction. That is, once we fully understand the culturally embedded nature of these performances, we must realize that we could no more reproduce them than we could hear today’s popular music through the ears of a seventeenth-century Mantuan.

Kelly (who is a columnist for *Early Music America*) declares his own allegiances in the introduction, stating that “some of the best and most exciting musical performances being given today are by performers using old techniques and period instruments.” And yet his own book is exactly the sort of scholarship that deserves to replace a less informed worship of the past that is too often witnessed among the enthusiasts for the early. History can often be used ahistorically, and many have rightly accused the early music movement of doing the same.

For all of Kelly’s impressive research, though, there is a nettlesome contradiction at the heart of his project. The time machine into which he invites the reader to step can never actually work, for the same reason that reconstructing these premieres would be impossible: we have no choice but to imagine them through our own contemporary minds. Indeed, the very premise of Kelly’s book—that these works cannot be viewed as detached from the cultures that produced them—prevents any meaningful time travel. Kelly can take us close to these extraordinary premieres, but we are left, in the end, to stand in the vestibule outside the old concert hall, peeking through cracks in the double doors into a fascinating but murky past. ■

CAMBRIDGE DIARIST

Boob Tube

ONE OF TELEVISION'S insufferable talking heads—not Cokie Roberts, not Bill Schneider, not Tim Russert, not any one of them—will admit it. But we're in this mess in large part because at 2:18 a.m. on November 8 the networks awarded Florida to George W. Bush despite the fact that he hadn't yet won it. And suddenly we had what we might call a president-presumptive. Why they did so is hard to fathom. After all, the margin between the governor and the vice president was close and getting closer; and the networks had already made one precipitate prediction when, early in the evening, they gave the state to the vice president. As it turns out, however, the TV prognosticators were probably right the first time: Al Gore did win more votes in Florida than Bush, many more votes than we will ever know.

A MANUAL RECOUNT IN PALM BEACH, Volusia, Broward, and Miami-Dade Counties would uncover only a small fraction of Gore's additional votes. After all, the recounters are empowered to include only "undervotes"—for instance, the now-infamous "hanging chads" produced by voters who punched their ballots with insufficient force. The hand recounts will do nothing about the 19,000 "overvotes" (ballots in which two or more candidates for the same office were chosen) rejected in Palm Beach alone. James ("Fuck the Jews") Baker has effusively praised the machines that gave us the initial Florida count (and then another one 1,400 votes different). But there's a reason Florida, and for that matter George W.'s Texas, allow for hand counts when elections are close. Computers cannot discern motive—which, although subjective, is critical to determining whether a ballot is legitimate or not.

THEN THERE ARE THE 3,407 VOTES counted in Palm Beach County for Pat Buchanan, which even he doesn't claim were cast for him, admitting that most probably belong to Gore. (There is also the similar issue of the more than 300 votes credited to the Libertarian Party aspirant in Osceola County, which has only 100 registered Libertarians.) These anomalies

are not an accident, and they did not crop up just because many of the voters in Palm Beach are elderly. They result from a cockamammy ballot design that, even if it wasn't deliberate, amounts to a denial of the right to vote of tens of thousands of citizens. On David Letterman's show, Cokie Roberts dismissed the Buchanan voters and overvoters of Palm Beach, claiming that "stupidity is not really an excuse." A good laugh was had by all. And this is essentially what the Bushies are saying as well. It isn't just that they're willing to ignore the patent truth that the computer count distorted the real results of the election. They are, in fact, eager to suppress that truth, and they'll use their control of state machinery to do it.

TAKE, AS JUST ONE INSTANCE, Katherine Harris, Florida's secretary of state, in whose portfolio the power to certify the fairness of the election falls. She happens to have been state co-chair of the Bush campaign, and she campaigned for her boss's brother in New Hampshire. In the present circumstances, you might think she would have recused herself from the contentious matters she has on her agenda. Instead, she tried to shut down the hand recounts before they were finished, even though several counties had voted for them and couldn't complete them for several days. Here is an indication of how little this lady cares about elementary ethics: As secretary of state, she spent public money on TV ads showing General Norman Schwarzkopf urging citizens to vote. She did this even though the general had appeared onstage with Bush during the Republican convention and had previously recorded a phone message for the Republican National Committee that was sent to hundreds of thousands of Floridians, urging them not just to vote but to vote for George W. The general does double duty. Or is it moonlighting?

THE CHAIRMAN OF THE GORE campaign, William Daley, is the son of Mayor Richard Daley, who joined with Tom Hayden to launch a riot during the Chicago Democratic Convention of 1968. Mayor Daley was one of those old-fashioned ethnic machine politicians who took care of his own the old-fashioned way. And when other ethnic or racial groups showed their loyalty to the Democratic Party, he took care of them, too. I don't have much nostalgia for that Mayor Daley. But the "like father, like son" cheap shots that George Will, Karl Rove, and the Murdoch empire have been taking at his son, who is a man of utter probity, are very cheap, indeed. They have no basis in fact and represent the worst sort of guilt by association. Rove and Will are Bible-

quoting men. Here's an apt quote from Jeremiah they don't seem to have grasped: "[T]he fathers have eaten sour grapes, and the children's teeth are set on edge."

IN THE BUSH CLAN, HOWEVER, SONS do not learn from their father's mistakes; they avenge them blindly. How often during the campaign did Republicans insist (often to nervous conservatives) that W.'s administration would not be a reprise of his father's? And, in particular, they insisted that Baker would be kept far away. That lasted a whole two days after November 7, and then W. got nervous about Florida, and Baker reappeared. To be sure, I'm not a big fan of Warren Christopher, Gore's representative in Florida, either. But at least Christopher didn't support \$2 billion in loan guarantees (and agricultural credits) to Saddam Hussein and then short-circuit a war that might have driven the Iraqi dictator from power.

BAKER, WE ARE INFORMED, IS NOW a paragon of virtue—and spends his days explaining why hand recounts violate constitutional principles. But that reputation is entirely unearned. According to Mortimer Zuckerman in *U.S. News & World Report* (May 18, 1992), as treasury secretary, Baker "rejected a Brazilian proposal that would have forced U.S. banks to write down billions of dollars worth of bad debts loaned to Brazil and other Latin American countries. Baker failed to disclose his personal interest..." That personal interest was in the publicly traded shares of Chemical Bank, amounting to something like \$4 million. After Baker rejected the proposal, big-money bank center stocks, including those of Chemical, rose about 40 percent. A few years later, while secretary of state, Baker finally disposed of his bank holdings, to avoid any appearance of conflict of interest. But he'd already profited plenty. This crowd does not know right from wrong.

GEORGE W., IN FACT, MAY NOT KNOW much of anything. The other night on television, the Texas governor introduced his dog to the American people, and—do you believe it?—his dog is named Spot. Young Bush is not an entitled man; he is an ordinary man. At the same photo-op, he crowned "First Lady Bush." He did this when panic was already evident in Jim Baker's creepy smile. But Bush is unfazed. He certainly presumes that he's the president-elect. After all, didn't the TV networks, in the dark hours of the morning, say so? And, if you can't trust the regulars on the tube, damn it, whom can you trust?

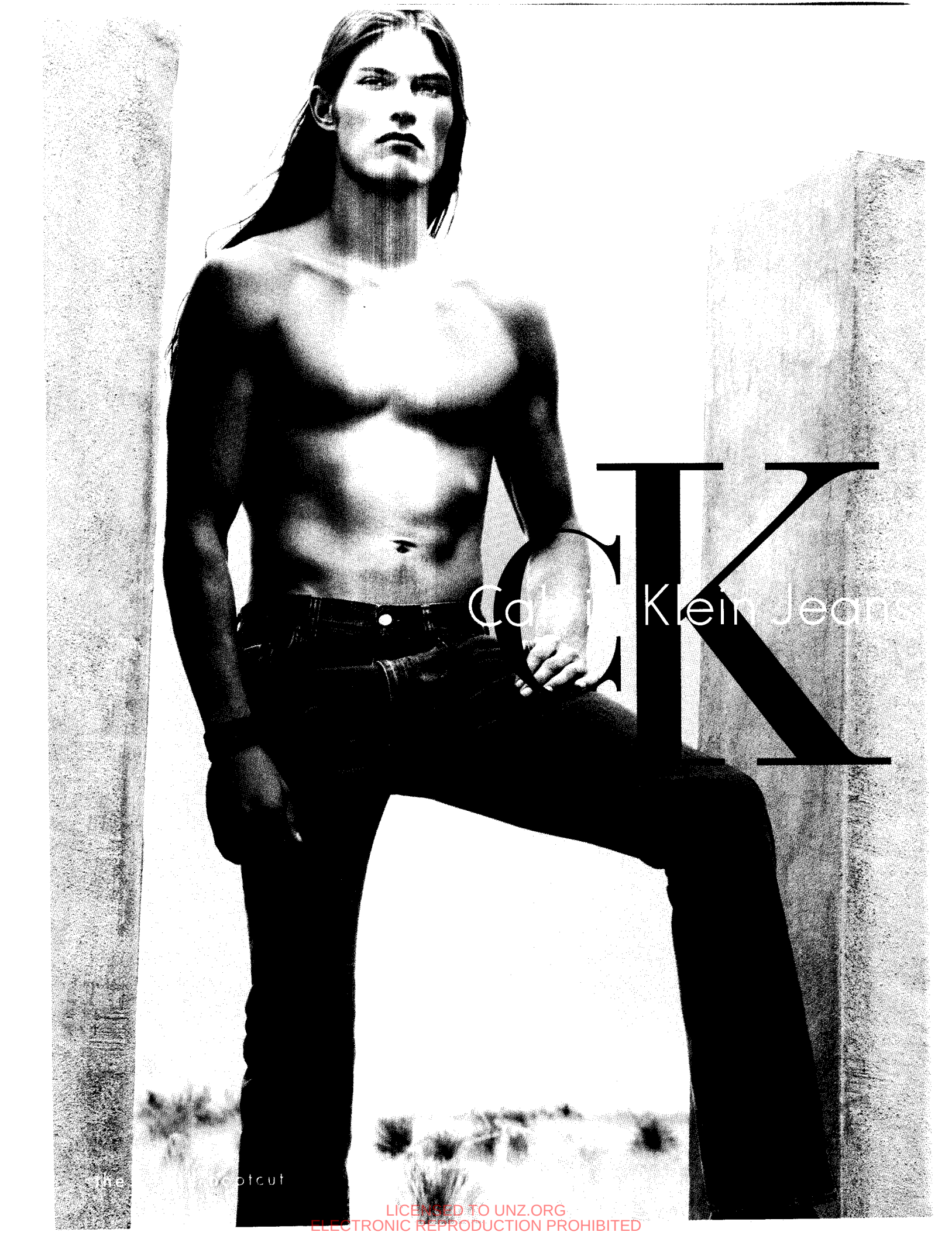
MARTIN PERETZ

ROOT CANAL. PROSTATE EXAM. MARKET PLUNGE.

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GRIN AND BEAR IT.

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